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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 602 (RA)

5 MICHAEL HILD,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 15, 2021
10:00 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
Southern District of New York

17 JORDAN ESTES

18 SCOTT HARTMAN

Assistant United States Attorneys

19 BEN DUSING

20 KATY LAWRENCE

Attorneys for Defendant

21 Also present:

22 Brandon Racz, S.A., F.B.I.

Adam Basinger, Defense Paralegal

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(Trial resumed; jury not present)

THE COURT: I did want to briefly address an outstanding issue on Government Exhibit 412. I agree that the portion preceding the line the government wanted to admit should be admitted and will allow the government to do so. I do though think it is a little unfair to just cut it off right after that because it does make it look like that was the end of the call.

What I am going ask you to do, I am going to let some more of it in, but I really think it would be more productive to you could get back together and see, look, if my decision is I am going to allow in a little bit more context, what context really makes sense, and I am going ask you to all to have a little more conversation about it.

All right. Thank you.

Are there any other issues that we need to raise.

MS. ESTES: Yes, your Honor.

One issue, it actually relates to the public call-in line. We learned yesterday that one of our witnesses, actually, our next witness was listening to the dial-in yesterday. And we also learned this morning when we contacted our other witnesses to see if they listened and to instruct them not to listen, we learned this morning that I second witness had listened to it.

Haden Novikoff has also listened to the dial-in. We

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1 have instructed him not to do it anymore, but I understand that
2 defense counsel may have some issues with that.

3 MR. DUSING: We do, your Honor. Those two witnesses,
4 as I understand it, this issue is in play for, the first is a
5 Mr. Misiano, who is perhaps the next witness to be called by
6 the government. He is with one of the victims here, and the
7 defense preliminarily does not have an issue with Mr. Misiano
8 testifying given that the subject matter of his testimony
9 really doesn't relate to Mr. Stumberger's.

10 Mr. Novikoff, however, is a different story. We would
11 have an issue with Mr. Novikoff testifying in light of this
12 development. Full disclosure, we did not formally move for the
13 separation of witnesses. I felt like we had that
14 understanding, but I want to be clear with the Court that was
15 not formally maid. Mr. Novikoff reported to Mr. Stumberger.
16 The subject matter of their testimony overlaps directly, and it
17 is hard to imagine that this didn't affect things.

18 THE COURT: I think this is super unfortunate. But
19 you're right, you didn't formally move for sequestration, so
20 nothing has been formally violated. That said, I think it's
21 fair game for cross. I am not going to preclude the witness
22 from testifying, but I am not going to preclude you from asking
23 questions about it.

24 MR. DUSING: Fair, your Honor.

25 Could I so move under 615 for separation at this time?

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1 THE COURT: Absolutely. And the government should
2 instruct all of its witnesses that they are not permitted to
3 listen to the call-in number, just like they wouldn't be
4 permitted to come into the courtroom and listen to the
5 testimony.

6 MS. ESTES: Yes, your Honor. We did so.

7 THE COURT: The same is true for defense witnesses to
8 the extent there are any witnesses you intend to call.

9 MR. DUSING: Very good, your Honor.

10 THE COURT: Anything else would you like to raise?

11 MS. ESTES: No, your Honor. Thank you.

12 THE COURT: Can we bring the jury in.

13 We can bring the witness in.

14 Now let's turn on the dial-in number. Do you all have
15 paralegals or agents who can reach out to the other witnesses
16 to make sure no one is calling in?

17 MR. HARTMAN: Yes, your Honor. We actually talked to
18 all the counsel for all the witnesses this morning. That is
19 how we learned about the other witnesses.

20 (Pause)

21 THE COURT: We are now just testing the public call-in
22 number and we are getting the jurors ready to come in.

23 (Witness resumed)

24 DARREN STUMBERGER, resumed.

25 THE COURT: Good morning, folks. You can all be

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Stumberger - Direct

1 seated. Thank you all for getting here so promptly this
2 morning. It is much appreciated.

3 You may proceed whenever you are ready.

4 I am just going remind you that you are still under
5 oath.

6 THE WITNESS: Thank you, Judge.

7 DIRECT EXAMINATION (Continued)

8 BY MR. HARTMAN:

9 Q. Mr. Stumberger, when we left off, we were talking about the
10 issues with respect to Scott Skyrn and Wedbush.

11 I want to start today by just talking about what
12 happened after that request. We heard a call about a request
13 for a broker to value a CUSIP. Can you tell us what happened
14 with respect to that after the call occurred?

15 A. Yes. My recollection is Live Well provided a dealer name
16 to Wedbush. At that point Wedbush had tried to have a
17 conversation with that dealer. That conversation didn't go
18 anywhere. Scott at Wedbush came back to Live Well asking for
19 another dealer. Live Well provided that dealer to Wedbush.

20 MR. DUSING: Objection, your Honor.

21 Foundation for what Wedbush did or said.

22 THE COURT: All right.

23 MR. HARTMAN: I can ask a clarifying question.

24 THE COURT: Thank you.

25 BY MR. HARTMAN:

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Stumberger - Direct

1 Q. Mr. Stumberger, is your testimony based on the information
2 that Scott at Wedbush provided to your team.

3 A. Yes.

4 Q. So you said you learned that Wedbush had gone to the
5 dealer, that the dealer -- what happened with respect to that
6 dealer?

7 A. I was told Wedbush tried to get information from --

8 MR. DUSING: Objection, your Honor. Hearsay.

9 THE COURT: Yes. Is it being admitted for the truth?

10 MR. HARTMAN: No, your Honor, just for the effect on
11 the listener and the team. That's the only relevance.

12 THE COURT: I am going overrule the objection.

13 You may answer.

14 A. What was the question?

15 Q. Sorry. What was your understanding of what happened when
16 Wedbush went to this dealer?

17 A. My recollection was Wedbush went to the dealer and the
18 dealer was either nonresponsive or the conversation didn't go
19 anywhere, leading to Wedbush requesting another dealer from
20 Live Well.

21 Q. OK. Did you learn through conversations with Wedbush or
22 conversations that your team had with Wedbush about what
23 happened as a result of that?

24 A. Yes. My recollection is that Wedbush had a conversation
25 with the second dealer name we provided, and the CUSIPs or the

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Stumberger - Direct

bonds that Wedbush was asking about were in fact not the HECM IOs. They were CUSIPs from another sector.

Q. OK. Now, Mr. Stumberger, I want to move on to a call that took place the day after the call that we listened to the end of yesterday.

MR. HARTMAN: Ms. Troy could you please put up for the parties Government Exhibit 401-4T.

THE COURT: OK. The government offers Government Exhibit 401-4T and the corresponding recording.

MR. DUSING: No objection, your Honor.

THE COURT: It will be admitted.

Thank you.

(Government Exhibit 401-4T received in evidence)

MR. HARTMAN: Ms. Troy, could you publish for jury -- we are in January of 2017. This is January 13, 2017. Is this the call we looked at, at the end of yesterday?

A. Yes.

MR. HARTMAN: Ms. Troy, could I ask you to move forward to line 220.

OK. If we could play the recording beginning at line 220.

(Audio played)

MR. HARTMAN: Ms. Troy, could you stop right there.

BY MR. HARTMAN:

Q. Mr. Stumberger, Mr. Hild refers to a problem. What did you

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Stumberger - Direct

1 understand the problem to be that he's referring to there?

2 This is on line 233. He says, "I don't know how to solve this
3 problem without, without doing some form of securitization."

4 A. It's my understanding the problem generally is the bonds
5 are marked above market with the repo lenders. And now this
6 was the day before you had one of the repo lenders asking
7 basically to validate the prices.

8 Q. Why was that a problem?

9 A. It was a problem because the lenders were
10 under-collateralized.

11 JUROR: OK. Ms. Troy, you can go ahead and play.

12 (Audio played)

13 MR. HARTMAN: Ms. Troy, can you stop right there.

14 BY MR. HARTMAN:

15 Q. Mr. Stumberger, when you say at the end of that portion we
16 just listened to, "If you find another bank with a 3 percent
17 haircut that would be able to take in big parts of the
18 portfolio, the 3 percent haircut, because the drop in haircut
19 could offset the market price moves," what were you envisioning
20 there?

21 A. Being able to move the portfolio from an existing repo
22 lender at a specified haircut of 10, 20, 25 percent to another
23 lender at 3 percent. That would allow for the prices, you
24 could normalize in some magnitude the prices because of the
25 lower haircut.

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Stumberger - Direct

1 Q. OK. And is the idea that because of the smaller haircut
2 Live Well wouldn't have to put in as much cash?

3 A. Yes. Also that the prices could be normalized.

4 Q. OK. And when you say normalized, what do you mean by that?

5 A. Just brought back into market context.

6 MR. HARTMAN: Ms. Troy, you can go ahead and play.

7 (Audio played)

8 MR. HARTMAN: You can stop right there.

9 BY MR. HARTMAN:

10 Q. Mr. Stumberger, when Mr. Rohr said, "Well, then you have
11 regulators asking you, well, how do you know you can, you can
12 carry it at this," did you understand what he meant by that?

13 A. My understanding is that that would be in the context of
14 buying a bank and having the portfolio financed by that bank,
15 there would be regulators asking questions about the valuation
16 and why.

17 MR. HARTMAN: OK. And then let's just play the last
18 part.

19 (Audio played)

20 BY MR. HARTMAN:

21 Q. OK. Mr. Stumberger, you say in response to Mr. Rohr, well,
22 at least the prices would be right, and then it's just a
23 haircut thing.

24 What are you referring to there?

25 A. What I'm saying is, in this example of moving to a low

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Stumberger - Direct

1 haircut, 3 percent, for example, that would allow for the
2 prices I say to be right, which I mean market context.

3 MR. HARTMAN: OK. Ms. Troy, you can take that down.

4 Mr. Stumberger, after this incident with Wedbush in
5 January of 2017, was there a change in the lending relationship
6 between Live Well and Wedbush?

7 A. Yes.

8 Q. OK. And what happened?

9 A. My recollection was immediately thereafter this set of
10 discussions, Wedbush requested that Live Well remove certain of
11 its bonds from its line.

12 Q. OK. And then were there further discussions about whether
13 Live Well could continue to finance through Wedbush?

14 A. Yes.

15 Q. Do you know about these discussions because of your
16 participation in these events and your conversation with your
17 team and Mr. Hild?

18 A. Yes.

19 Q. Did you discuss with Mr. Hild these changes with respect to
20 Wedbush?

21 A. Yes.

22 Q. OK. So you said initially Wedbush asked Live Well to
23 remove certain bonds from the line. Just to be clear, so we
24 are all following, what does that mean, removing the bonds from
25 the line?

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Stumberger - Direct

1 A. What that means is Wedbush requested that some of the bonds
2 they were financing they didn't want to finance anymore.

3 Q. OK. And what did that mean for Live Well in terms of its
4 cash position from your understanding?

5 A. My recollection and understanding is that Live Well needed
6 to move those bonds to another lender, and the only lender at
7 that time available was one of another dealer, and that, that
8 created a situation where Live Well had to come up with a lot
9 of cash to supplement that move.

10 Q. Which dealer are you referring to?

11 MR. DUSING: Objection, your Honor, foundation for the
12 availability of the dealers.

13 MR. HARTMAN: Well --

14 THE COURT: Can you rephrase.

15 MR. HARTMAN: I can address that.

16 BY MR. HARTMAN:

17 Q. Mr. Stumberger, were you part of discussions about how to
18 deal with the fact that Wedbush was requesting that these bonds
19 be moved to a different line --

20 A. Yes.

21 Q. -- or off their line?

22 Were you part of discussions about what other dealers
23 or what other financiers were available for these bonds?

24 A. Yes.

25 Q. Was Mr. Hild part of those discussions?

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Stumberger - Direct

1 A. Yes.

2 Q. So, in the context of those discussions, did you learn or
3 did you develop an understanding about where else Live Well
4 might have been able to finance these bonds?

5 A. Yes.

6 Q. OK. You referred to another dealer. Who are you referring
7 to there? What entity?

8 A. Nomura.

9 Q. OK. We heard testimony earlier about this, but just to
10 remind us, did Nomura accept IDC pricing for its lending
11 limits?

12 A. No.

13 Q. How did Nomura determine how much to lend against these
14 bonds?

15 A. They determined it themselves. They had a trading desk
16 that was very active in the sector.

17 Q. And for a given bond, how did the amount that Nomura would
18 be willing to lend to Live Well compare to the amount that the
19 lenders who relied on IDC would be willing to lend at this
20 time?

21 A. Apples to apples, lower.

22 Q. And why is that?

23 A. Because Nomura marked bonds or lent against bonds based on
24 the market.

25 MR. DUSING: Objection, your Honor, to foundation for

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Stumberger - Direct

1 Nomura's knowledge as well as his understanding of the market.

2 THE COURT: Why don't you ask a few more questions.

3 MR. HARTMAN: Sure.

4 BY MR. HARTMAN:

5 Q. So, did you have an understanding about why it would be
6 that Nomura would finance the bonds at a lower rate? Did you
7 have conversations with Nomura about how they looked at the
8 bonds?

9 A. Yes.

10 Q. OK. And based on those conversations, what was your
11 understanding about why Nomura's valuations for these bonds
12 were lower than IDC's valuations?

13 A. My understanding is they marked bonds where they were
14 trading the bonds in the context of the market.

15 Q. OK. You made a distinction, you mentioned that Nomura is a
16 dealer, and we talked a little bit about this distinction
17 earlier. What does that mean that they were a dealer?

18 A. They were a securities dealer broker/dealer, registered
19 broker/dealer, large investment bank at -- active in many
20 different sectors within fixed income, and they had a major
21 presence in this specific sector, reverse mortgage trading.

22 Q. OK. So were they more like Jeffries than the other repo
23 lenders that we've talked about so far?

24 A. Yes.

25 Q. And we talked about Jeffries yesterday. Were they also

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Stumberger - Direct

1 active in this space?

2 A. Yes.

3 Q. Did you share with Mr. Hild the fact or did you and your
4 team share with Mr. Hild the fact that Nomura would not lend
5 against these bonds using the Scenario 14 prices?

6 A. Yes.

7 Q. OK. Now, you said that the disappearance of the Wedbush
8 line would cause a problem for Live Well.

9 Can you just tell us, give us that again. How did
10 that affect things?

11 A. Sure. So, moving the bonds from Wedbush to Nomura in this
12 example created a cash need for Live Well, and what I mean by
13 that is moving -- so the valuations being lent against at
14 Wedbush would be very different at Nomura. So the valuations
15 being lent against would drop, and I forget exactly at the time
16 the difference in haircut -- I don't -- I'm not going to opine
17 on that without seeing it, but the valuation drop caused the
18 need for Live Well to come up with a meaningful amount of cash
19 to pay off the loan at Wedbush.

20 Q. OK. So is that because Nomura would not lend enough to pay
21 off the loan at Wedbush?

22 A. Yes.

23 Q. Now you talked about the fact that initially Wedbush asked
24 Live Well to remove specific bonds from the line. At some
25 point did Wedbush notify Live Well that it was going to end the

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Stumberger - Direct

1 lending relationship entirely?

2 A. Yes.

3 Q. OK. And what would be the consequences of that based on
4 your conversations with Mr. Hild and others in terms of the
5 cash requirements for Live Well?

6 A. My recollection was the amount of cash or money needed was
7 very large in magnitude.

8 Q. OK. And did Mr. Hild express a view about this problem?

9 A. Yes. My recollection was it was he was very upset.

10 Q. OK. What was the tenor of your conversations with him and
11 others about this problem?

12 A. My recollection was during this period of time it was we
13 were in scramble mode. It was very tense and trying to move
14 quickly to figure out how to move the bonds from the, you know,
15 Wedbush to the other line.

16 Q. Why not just sell the bonds and use the cash to pay off
17 Wedbush?

18 A. It wasn't discussed. The prices obtained by selling the
19 securities wouldn't have been enough to pay off the loan.

20 Q. Now, in addition to the issues with respect to Wedbush, was
21 Live Well facing other liquidity problems or cash problems in
22 early 2017 based on your conversations with Mr. Hild and
23 others?

24 MR. DUSING: Objection, your Honor, foundation for
25 what Live Well knew. The witness can speak to his personal

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Stumberger - Direct

1 understanding.

2 THE COURT: Can you lay that foundation please.

3 MR. HARTMAN: Sure.

4 BY MS. ESTES:

5 Q. Mr. Stumberger, did you have conversations during this time
6 period with Mr. Hild, Mr. Rohr, and others at the company about
7 other liquidity concerns or cash concerns that Live Well was
8 facing in early 2017?

9 A. Yes.

10 Q. OK. And can you tell us what some of those were based on
11 your conversations?

12 A. Yes. So during this time immediately after the situation
13 with Wedbush, my recollection was another repo lender requested
14 the bonds to be removed.

15 Q. Do you remember which one that was?

16 A. Mizuho.

17 Q. OK.

18 A. After that there was a margin call from Nomura sent to Live
19 Well, and there was another issue with one of the bonds being
20 sold and taking a loss, but that -- that's different.

21 Q. OK. Now, what was the solution to these cash needs on the
22 part of the company? Did you discuss with Mr. Hild what the
23 solution would be?

24 A. I was a part of those discussions.

25 Q. OK. Did he propose a solution?

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Stumberger - Direct

1 A. Yes.

2 Q. What was the solution that he proposed?

3 A. The initial solution was to submit marks to IDC in early --
4 late January, early February to raise cash -- potentially to
5 raise cash, to extract cash from the lenders to use to
6 supplement the move between the lines.

7 Q. Was that the only time in early 2017 that Live Well
8 increased marks at IDC?

9 A. No.

10 Q. When else did Live Well increase marks at IDC?

11 A. My recollection was there was a mark submission in
12 mid-March and another submission at the end of March.

13 Q. And from your understanding and your conversations with
14 Mr. Hild and others, what was the reason for these submissions?

15 A. The reason for the submissions in my understanding was to
16 generate cash for these liquidity needs.

17 Q. Were there any market events to your knowledge or
18 understanding that dictated these increases in price in the
19 February and March 2017 time period?

20 A. I don't recall there being any kind of market or
21 macroeconomic events in early 2017.

22 Q. OK. And at that time, before the mark submission, was
23 there any discussion of macroeconomic events that would justify
24 these price increases by Mr. Hild?

25 MR. DUSING: Objection, your Honor, in his opinion.

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Stumberger - Direct

1 The objection would be foundation.

2 MR. HARTMAN: I was just asking whether he had
3 discussions of these issues with Mr. Hild.

4 THE COURT: I will allow that question. You can
5 answer that.

6 A. Related to macroeconomic events in --

7 Q. To support the price increases in February and March.

8 A. My recollection was there weren't discussions related to
9 market events in January or February. That's just my
10 recollection. There were discussions towards the end of March
11 is what I remember.

12 Q. OK. Was that after these price increases had occurred?

13 A. My recollection was, yes, there were other discussions
14 related to some other things, but, yes.

15 Q. OK. We'll come back to that at some point.

16 Now, you spoke about the initial set of price
17 increases, and I think you said it was in early February of
18 2017, is that right?

19 A. Yes.

20 Q. Was there a set of assumptions that was used to support
21 those February price increases?

22 A. Yes.

23 Q. And did that have a name?

24 A. My recollection was it was a scenario, Scenario 4 from a
25 prior set of analytics.

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Stumberger - Direct

1 Q. What was the effect of the implementation of Scenario 4 on
2 the IDC indicated value of the bond portfolio?

3 A. The effect was a very large increase in valuation.

4 Q. Do you remember about how much it was?

5 A. My recollection was on the order of 20 million.

6 Q. OK.

7 A. Maybe higher.

8 MR. HARTMAN: OK. Let's look at a call that relates
9 to this.

10 Ms. Troy, could we please show for the parties and for
11 the Court what's been marked for identification as Government
12 Exhibit 409T.

13 The government offers Government Exhibit 409T as well
14 as Government Exhibits 409-1 and 409-2?

15 MR. DUSING: No objection, your Honor.

16 THE COURT: All right. They will be admitted.

17 Thank you.

18 (Government Exhibits 409-1, 409-2 and 409T received in
19 evidence)

20 MR. HARTMAN: Ms. Troy, could we show that for the
21 jury.

22 BY MR. HARTMAN:

23 Q. Mr. Stumberger, this is a call from February 3, 2017, is
24 that right?

25 A. Yes.

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Stumberger - Direct

1 Q. Is this around the time of the Scenario 4 price submission
2 that you described?

3 A. Yes.

4 MR. HARTMAN: Ms. Troy, can we move forward to line
5 157, please.

6 OK. And let's play the call, beginning at line 157.

7 (Audio played)

8 MR. HARTMAN: OK. Ms. Troy. Thank you.

9 BY MR. HARTMAN:

10 Q. Mr. Stumberger, on line 165, Mr. Hild talks about -- well,
11 actually a little earlier he talks with making a gradual move
12 where he says, making a move towards Scenario 4 gradually here
13 toward the first half of the month. Did you have an
14 understanding of what he meant by making a move gradually?

15 A. Yes.

16 Q. What was your understanding of that?

17 A. My understanding is Scenario 4, the outcome of Scenario 4
18 led to a large valuation increase and that led to submissions
19 to IDC. And this was similar to what I said prior. It would
20 be a series of submissions or a gradual increase in the
21 valuations to get to the full amount.

22 Q. OK. And he says he wants to do it in preparation for, you
23 know, all this stuff. Do you have an understanding of what
24 he's referring to when he says "all this stuff"? He also talks
25 about "bad things." Do you know what that is?

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Stumberger - Direct

1 A. My understanding of all this stuff is there were different
2 dates in which bonds had to be removed from Wedbush and sent to
3 the other lender. It wasn't all in one day. It was staggered
4 over the month, over the next few months. So that's -- that's
5 my understanding of this stuff.

6 Bad things, my understanding is what was happening in
7 lenders calling up and requesting bonds to be removed off the
8 line.

9 Q. He says, "The train's run off the tracks here with
10 Wedbush."

11 What did you understand him to be talking about there?

12 A. My understanding is exactly that, getting a call from
13 Wedbush requesting the bonds be removed.

14 Q. On line 172 he says, "It doesn't mean we can't claw that
15 back and reduce it if we don't need it, you know."

16 What did you understand him to mean when he said, "We
17 could claw that back and reduce it if we don't need it"?

18 A. My understanding is the submission or the ultimate -- the
19 total amount of Scenario 4, the valuation increase was large in
20 magnitude. My understanding of what he means by here is if it
21 was ultimately -- that was a large increase to extract cash via
22 margin call to use to supplement these moves. If some of these
23 moves didn't come to fruition for whatever reason, then the
24 price increase via Scenario 4 could be reversed or prices
25 lowered and reduced back if it's not needed.

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1 Q. OK. Mr. Stumberger, you testified yesterday about your
2 experience at other institutions marketing bonds and coming up
3 with bond prices.

4 In that experience, had you ever considered whether or
5 not you would need liquidity at that institution in determining
6 what price to assign a bond?

7 A. No.

8 Q. OK. Based on your experience, are there any circumstances
9 in which you would submit a price increase or increase the
10 price of a bond with the expectation that you might back that
11 price increase out if you didn't need it?

12 A. I don't recall ever doing that.

13 Q. OK. The last portion of this excerpt that we listened to
14 talks about setting off alarm bells. What did you understand
15 Mr. Hild to be talking about there?

16 A. My understanding is the conversation here is about being
17 preemptive or being -- getting this done ahead of time, and the
18 rationale was that last sentence, you know, that's the
19 thinking, because a drastic move or, you know, one -- onetime
20 submission to IDC with the magnitude of the valuation increase
21 may have set off red flags, alarm bells, and triggered, you
22 know, scrutiny.

23 MR. HARTMAN: OK. Ms. Troy, why don't we go forward
24 to line 379 in this transcript.

25 Ms. Troy, can you play starting at line 379.

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Stumberger - Direct

(Audio played)

BY MR. HARTMAN:

Q. OK, Mr. Stumberger, at the end of that conversation,

Mr. Hild is asked about IDC, and you say, "I think the only color we have is the maximum can be a point without them asking a ton of questions."

What are you referring to there?

A. What that means is, in the context of a price submission to IDC, the only time IDC questioned, challenged the submission was a submission where bonds were delivered over a point higher in price?

Q. Did you know that based on your experience in submitting marks to IDC?

A. Yes.

Q. And then you say, at the end you say again, just the other two lines, doesn't matter to do anything on the Wedbush line. What are you talking about there?

What are you talking about there?

A. My understanding of what I said there is it would make sense, in the context of generating cash for this liquidity need, it would make sense for the price submissions to be directed to bonds on other repo lines, not Wedbush, because those bonds were coming off.

MR. HARTMAN: Ms. Troy, you can take that down.

BY MR. HARTMAN:

Q. Mr. Stumberger, ultimately were these Scenario 4 prices

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Stumberger - Direct

1 fully implemented?

2 A. My recollection is yes.

3 Q. OK. And did Live Well borrow money as a result of
4 implementing the Scenario 4 prices to your understanding?

5 A. My understanding is yes.

6 Q. OK. You mentioned there were also some price increases in
7 March. Do you remember about how much they were?

8 A. My recollection was mid-March was on the order of 2.5
9 million. And the increase that occurred at the end of March,
10 my recollection or memory was about 20 million.

11 MR. HARTMAN: Ms. Troy, could you please put up for
12 the parties and for counsel and the Court what's been marked
13 for identification as Government Exhibit 201.

14 The government offers government Exhibit 201.

15 MR. DUSING: No objection.

16 THE COURT: It will be admitted.

17 (Government Exhibit 201 received in evidence)

18 MR. HARTMAN: Ms. troy, could you display that for the
19 jury.

20 BY MR. HARTMAN:

21 Q. Mr. Stumberger, this is an e-mail from March 30, 2017.
22 It's from Mr. Foster to Mr. Hild and it cc's Mr. Rohr, who
23 you've testified is the CFO, and yourself. And the subject
24 line is March ME materials.

25 What does ME mean?

L4fnhill

Stumberger - Direct

1 A. Month end.

2 Q. All right. And so this is happening at the end of March
3 2017. Is this after the price submissions you have just
4 described?

5 A. Yes.

6 MR. HARTMAN: Can we see the attachment, please,
7 Ms. Troy. If we could zoom in on just the blue box at the top
8 and -- yeah, that's fine. That's great.

9 BY MR. HARTMAN:

10 Q. OK. Mr. Stumberger, I think we looked at one of these
11 yesterday, but can you just remind us what this format is. Was
12 this a format that you saw and used regularly in the course of
13 your work at Live Well?

14 A. Yes.

15 Q. And just remind us the context for this month-end sheet.
16 What was it and how was it used at Live Well?

17 A. Sure. So it was generally customary to mark bonds once a
18 month at the end of the month, and this is a set of analytics
19 to discuss the bond valuations to be submitted.

20 Q. OK. Were these submitted -- similar types of sheets
21 submitted at the end of every month at Live Well?

22 A. Yeah. These types of sheets were generated and discussed
23 every month.

24 Q. Who typically were these month-end sheets circulated to?

25 A. These sheets were circulated to the team, so Dan, Ernie,

L4fnhill

Stumberger - Direct

1 myself, Eric and Michael.

2 Q. OK. And then the scenarios that are outlined on the
3 left-hand side, just remind us as a general matter, how were
4 those used as part of these month-end discussions?

5 A. Different scenarios were laid out and each scenario
6 contained a different set of assumptions and inputs for the
7 valuation scenario.

8 Q. OK. And then ultimately remind us who would choose which
9 scenario would be sent to IDC?

10 A. Ultimately it was Michael sometimes Eric.

11 Q. OK. And column H, I think we looked this yesterday as
12 well, what's being shown in column H for each of these
13 scenarios?

14 A. Column H is -- I will read it, net day-over-day realistic
15 margin call impact. And what that means is, based on the
16 valuation generated by the scenarios, that would be the impact
17 in the context of potential margin calls.

18 Q. So is the idea if you loaded that Scenario 14 to IDC, this
19 would be the nature of the margin call or the amount of margin
20 call?

21 A. Correct.

22 Q. If that is a negative number, what does that mean in terms
23 of the margin call?

24 A. Negative means Live Well owes cash or money.

25 Q. Scenarios 4 and 5 here are labeled alternate 1 and

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Stumberger - Direct

1 alternate 2. Do you remember, based on your conversations and
2 participation in these discussions, what alternate 1 and
3 alternate 2 were designed to show?

4 A. Yes.

5 Q. What were they showing?

6 A. My recollection was those were two sets of scenarios or
7 inputs, set of inputs that were market contextual.

8 Q. What do you mean by market contextual?

9 A. Generic market inputs for prepayment speed and just rates
10 and yield.

11 Q. And who decided to include alternate 1 and alternate 2 on
12 this sheet?

13 A. My recollection was me.

14 Q. Why did you do that?

15 A. My recollection was I wanted there to be visible,
16 observable numbers in valuations based on the context of the
17 market versus where Live Well was at at the time in terms of
18 going through these events in the mark submissions and the
19 deviation from market contextual prices.

20 Q. OK. In column H, for alternate 1 the value there is
21 negative 143,811,849.

22 What does that mean?

23 A. That means if that scenario, Scenario 4, the valuation
24 based on that scenario's inputs and assumptions were submitted
25 to IDC it would lead to a 143 million and change margin call to

L4fnhill

Stumberger - Direct

1 Live Well.

2 Q. For the one below there, the negative 110 million number,
3 is it the same?

4 A. Yes. That's my understanding.

5 MR. HARTMAN: Ms. Troy, you can take that down.

6 BY MR. HARTMAN:

7 Q. Mr. Stumberger, at some point did you learn that Live Well
8 was under investigation by the Securities and Exchange
9 Commission?

10 A. Yes.

11 Q. What is the Securities and Exchange Commission?

12 A. The SEC is the primary regulator of the securities
13 industry.

14 MR. DUSING: Objection, your Honor.

15 THE COURT: And the basis of the objection? It's just
16 the definition?

17 MR. DUSING: 403 type of objection and foundation
18 before we get into this too much.

19 THE COURT: I will allow it. Overruled.

20 MR. HARTMAN: There's only a couple of questions on
21 this, Judge.

22 BY MR. HARTMAN:

23 Q. Mr. Stumberger, when did you learn that Live Well was under
24 investigation by the SEC?

25 A. July 2017.

L4FTHIL2

Stumberger - Direct

1 BY MR. HARTMAN:

2 Q. What was your reaction to learning that?

3 A. Very concerned. Troubled. Stressed.

4 Q. Did Mr. Hild give you any direction -- actually do you know
5 when Mr. Hild learned about the SEC investigation or did you
6 have conversations with him about the SEC investigation?

7 A. It was at the same time. I don't know the a specific date
8 but the same time period.

9 Q. Is that based on conversations that you had with him?

10 A. Yes.

11 Q. Did Mr. Hild give you any direction about what to do with
12 the bond prices after learning about the SEC investigation?

13 A. Yes.

14 Q. What did he tell you to do?

15 A. My recollection was do nothing, keep the price as is. And
16 I asked specifically: Is this the time to start the
17 normalization process? And the answer was no.

18 Q. Did he ask you --

19 MR. DUSING: Objection, your Honor, I'm very sorry,
20 could we have a sidebar.

21 THE COURT: Sure.

22 If you want to stand and stretch while we have
23 sidebars, you're welcome to.

24 (Continued on next page)

L4FTHIL2

Stumberger - Direct

1 (At sidebar)

2 MR. DUSING: Your Honor, I want to alert the Court to
3 this issue. This is where the issues come in with Mr. Hild,
4 the corporation, Mr. Rohr, who I expect we'll hear from, and
5 Mr. Stumberger had an oral ABA -- that was what was represented
6 to me -- who was engaged right at this time to deal initially
7 the SEC investigation.

8 So this kind of ties back to the conversation at the
9 pretrial conference. And my concern is if we go down this
10 path, this is how it's relevant in that I have to call them to
11 talk about the advice of counsel that was given precisely on
12 this issue, which was to hold the prices the same.

13 So I want to make sure the Court aware of that tricky
14 issue and if you want to go down that path.

15 THE COURT: Tell me where you're going.

16 MR. HARTMAN: Judge, my understanding is there are
17 discussions without counsel, and what he is relating is he had
18 conversations where counsel present for. And I was going to
19 ask this one question, and the next question was: Did Mr. Hild
20 direct you to do anything else? And he will say: He directed
21 me to try and justify the prices that were in IDC. That's the
22 only other question.

23 MR. DUSING: If he asks that question, then the
24 defense position is I have to call to testify that the legal
25 advice given was to hold the prices the same and that advice

L4FTHIL2

Stumberger - Direct

1 was taken. So I think the impression being given, the
2 direction was from Mr. Hild to Mr. Stumberger to hold the
3 prices the same. That decision was a legal counsel driven
4 decision.

5 MR. HARTMAN: Could I respond to that, Judge?

6 THE COURT: Yes.

7 MR. HARTMAN: Because I don't -- and I want the record
8 to be clear, we have no issue with Mr. Dusing calling the
9 McGonigle firm, by but doing that waives the privilege. So if
10 he wants to do that that and waive the privilege, we have no
11 problem with that, but my understanding is he is repeatedly
12 saying he doesn't waive the privilege. So I don't want there
13 later to be an argument that the Court introduced testimony or
14 suggested that he wasn't allowed to use an advice of counsel
15 defense here.

16 THE COURT: Give me the advice of counsel that he can
17 choose to waive versus the company, and are there other people
18 who would need to make that decision about waiver?

19 MR. HARTMAN: I think there are people who would need
20 to make that decision. We haven't had a conversation with them
21 about whether or not they would do that because -- and I looked
22 back at the transcript at the final pretrial conference because
23 I wanted to be sure that I was right about this, my
24 understanding is Mr. Hild doesn't want to waive. If he wants
25 to waive, we could have a conversation about it, but the

L4FTHIL2

Stumberger - Direct

1 company indicated they would consider waiving if that's
2 something -- if that was something that it was necessary. And
3 we conveyed to this to Mr. Dusing.

4 So this relates to the Ben English issue that came up
5 at the final pretrial conference and also this issue. Again, I
6 think we would want to be sure that Mr. Hild -- my
7 understanding with respect to Mr. English, the defense counsel
8 does not want to pursue that line of questioning about whether
9 Mr. English had concerns about the bond portfolio anymore. So
10 it's kind of moot with respect to Mr. English. That's what we
11 were told after we indicated that counsel might waive.

12 But with respect to this issue, if Mr. Hild wants to
13 waive with respect to the McGonigle firm, we're fine with that.
14 We would have conversations with the trustee about what their
15 position would be with and with Mr. Rohr about what his
16 position would be. We haven't talked to Mr. Rohr at all about
17 his communications with McGonigle precisely because we
18 understood Mr. Hild had a personal relationship with counsel
19 that he was not going to waive. If he wants to waive, we'll do
20 that. I think we could clear the other issues. It's really an
21 issue of his own privilege that I understand is not being
22 waived.

23 MR. DUSING: So I don't think any of this implicates
24 privilege at all. I think we're complicating this. I do not
25 intend to solicit testimony about legal advice requested or

L4FTHIL2

Stumberger - Direct

1 communications involved with the legal advice requested or
2 given. Based on the pretrial conference, I understand there's
3 some sensitivity to the McGonigle firm testifying. I would
4 like to avoid that in this testimony, but I'm not -- there's no
5 issue -- if we could down this path and the testimony from this
6 witness is going to be Mr. Hild directed me to keep the prices
7 constant, I will have to call the McGonigle firm to testify
8 that we gave legal advice to the firm who we represented, to
9 Mr. Hild who we represented, and frankly to Mr. Rohr, who they
10 represented at that time. I don't have to -- there's some
11 issues about the representations. I don't want to go down that
12 rabbit hole. If we go down that rabbit hole, I want to do it
13 eyes wide open because we're doing it right now.

14 THE COURT: Is there a way to avoid this?

15 MR. HARTMAN: I could move on from this. He's
16 answered the question already, so if you want to strike -- let
17 me talk to when Ms. Estes about that.

18 THE COURT: I want to make sure we're all thinking
19 through the implications of this at every stage.

20 MR. HARTMAN: I understand.

21 THE COURT: So why don't you do that and let me know.
22 I'm happy to wait here.

23 MR. HARTMAN: Counsel is saying that if we elicit this
24 testimony and he wants to call Tom McGonigle, I don't have a
25 problem with that. I want to be clear on that. I don't hear

L4FTHIL2

Stumberger - Direct

1 Mr. Dusing to say he's willing to waive the privilege. Our
2 issue has always been you can't have it both ways. If you want
3 to say counsel told you to do this, that's absolutely fine, and
4 it's a valid legal defense. I really want the record to be
5 clear on that.

6 THE COURT: I understand. That's different just from
7 my experience with the *Tagliaferri* case, so I get that, but I
8 do think it gets more complicated when the decision is not just
9 Mr. Hild's. The question is if we need to take a break and
10 call people, how is that going to work. I want to -- I'm not
11 making a decision without hearing you both out completely. If
12 you want to think about it and talk about it, come back and let
13 me know.

14 MR. HARTMAN: Let me talk to her, because if everyone
15 is on the same page that if we don't get into this with him
16 then the McGonigle issue is moot, we could strike this answer
17 and move on.

18 MR. DUSING: To be clear, my way of avoiding all of
19 this would be if we could strike the last portion of the
20 testimony about the price guidance after the SEC investigation.
21 I simply want to call or stipulate to the four things that I
22 mentioned at the pretrial conference, because it is highly
23 relevant that counsel was involved, we now introduced the SEC
24 investigation and the fact that the company, Mr. Hild,
25 Mr. Rohr, were all represented, much less by the same counsel,

L4FTHIL2

Stumberger - Direct

1 from that point until 2019 is relevant to issues in this case.

2 THE COURT: I think that what you suggested would be
3 really misleading. And again, if the company is willing to
4 waive the privilege and therefore there could be cross about
5 what were you told, but I think it would be really misleading
6 to leave the suggestion counsel was there for the entirety of
7 the time looking at the relevant issue, which suggests that
8 they gave their blessing without knowing what information they
9 were provided, and I think that would be misleading to the
10 jury.

11 MR. DUSING: Understood, your Honor. So it would then
12 require a waiver to that particular subject matter to put that
13 testimony on.

14 THE COURT: I think that's right.

15 MR. HARTMAN: I think that's right. Again, if
16 Mr. Hild wants to do that, we don't have a problem. I know I
17 keep saying that.

18 It may be that we would have additional questions we
19 would want to ask Mr. Stumberger or Mr. Rohr if that happened,
20 but I just want to be real clear, we don't have a problem with
21 that. It would be helpful, and if Mr. Dusing wants to talk to
22 his client about this, it would be helpful to know -- if he
23 wants to do that it would be helpful to know about it now
24 because we would like to ask Mr. Stumberger about that if he
25 would like to waive.

L4FTHIL2

Stumberger - Direct

1 MR. DUSING: The issue just came up, but recognizing
2 the validity of the point, and the Court's point is it may not
3 be solely Mr. Hild's or the company's to waive, it may be other
4 people, and I would like to think through the implications of
5 that.

6 To be clear, Mr. Stumberger was not represented, but
7 the others were. So I think preliminarily to discussions by
8 the client, the client personally would be willing to waive
9 privilege to that issue, but I don't think he could speak for
10 the company, certainly at this time. Certainly can't speak for
11 Mr. Rohr. We have a lot of issues.

12 THE COURT: Are you comfortable -- what I'm hearing is
13 a limited waiver. Are you comfortable with a limited waiver?

14 MR. HARTMAN: I think what we want is a subject
15 matter, the problem -- this is how it's different than a
16 traditional -- I know this is a long sidebar, but this is
17 different from a traditional presence of counsel. Counsel was
18 engaged on this specific issue. So I don't see how a subject
19 matter waiver on the issue of the pricing -- it certainly -- we
20 wouldn't want to or expect to be and able to get into questions
21 about strategy of defense or what happened earlier, but I think
22 we would want to understand and ask counsel about what they
23 were told about how the prices were derived and the history of
24 how they got there. So I think it would be more like a what
25 facts were conveyed to counsel waiver as opposed to what

L4FTHIL2

Stumberger - Direct

1 conversations took place around strategy.

2 To the Court's point earlier, we can avoid this issue.

3 THE COURT: If you're comfortable doing that,
4 obviously it makes it a lot easier, but I'm not ordering you to
5 do so without your consent, at least at this point.

6 MR. HARTMAN: Mr. Rohr is going to testify later in
7 the trial. And it may be that we wouldn't need to call
8 Mr. Stumberger to address these issues, we could elicit the
9 relevant information from Mr. Rohr. Again, we haven't talked
10 to him about this at all, but I think that we really need to
11 know one way or the other whether Mr. Hild wants to waive.

12 THE COURT: Because you have to recall people.

13 MR. HARTMAN: Right. Once we know that we could start
14 the conversation with the other parties. And I think we could
15 do that quickly, but we need to know soon. This was teed up in
16 the motions in limine and this is the first I'm hearing that
17 Mr. Hild may want to waive, but if we can set a date for that
18 so we know that, we could have those conversations.

19 MR. DUSING: And I didn't know to what extent we were
20 going to get into this, but my decision on that with counsel
21 with Mr. Hild would turn on whether or not the government is
22 willing to strike the last portion of his testimony and whether
23 or not there's going to be any further testimony about
24 everything that sort of transpired thereafter, because in that
25 event, the entire issue is gone. That would make things --

L4FTHIL2

Stumberger - Direct

1 MR. HARTMAN: What I suggest, if this is okay, we
2 could strike the question and answer about the direction that
3 he got from Mr. Hild and I can ask him what happened after the
4 SEC subpoena with respect to prices and he could say they were
5 kept constant.

6 MR. DUSING: No objection to that, your Honor.

7 THE COURT: Why don't we do that, and over the break,
8 over the lunch break, you all have to figure out the next steps
9 on this issue. Then give me as much notice as you can so I can
10 look through and look at the law. If there's anything
11 specifically on point, for example as to limited waiver, I need
12 to look more closely, and it will give me the time to do that.

13 MR. DUSING: Sorry about interrupting your Honor. If
14 you do that, we may moot the issue.

15 MR. HARTMAN: Great. Let me confer with Ms. Estes.

16 THE COURT: I will wait here.

17 MR. HARTMAN: Let me check with her.

18 (Pause)

19 MR. HARTMAN: Okay, that's fine. Can we get the read
20 back on what the question was?

21 (Pause)

22 MR. HARTMAN: So the two questions I asked that I
23 think raise this are:

24 "Q. Did Mr. Hild give you any direction about what to do with
25 the bond prices after learning about the SEC investigation?"

L4FTHIL2

Stumberger - Direct

1 "A. Yes.

2 "Q. What did he tell you to do?

3 "A. My recollection was do nothing, keep the price as is."

4 Our proposal would be to strike the two questions, and
5 the question I will ask him is: After the SEC investigation
6 came, what did Live Well do with respect to bond prices?

7 THE COURT: Why don't you move to withdraw the
8 question and I'll strike the question and answers.

9 MR. HARTMAN: Okay, I will do that.

10 MR. DUSING: Very good.

11 (Continued on next page)

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L4FTHIL2

Stumberger - Direct

1 (In open court)

2 MR. HARTMAN: Your Honor, at this time we move to
3 withdraw the last two questions, strike the answers to the
4 questions about bond prices, and I will pose a new question.

5 THE COURT: The last two questions and answers will be
6 stricken and you're not to consider them.

7 Thank you, you may proceed.

8 BY MR. HARTMAN:

9 Q. Mr. Stumberger, after you learned of the SEC investigation
10 and after Mr. Hild learned of the SEC investigation, what did
11 Live Well do with respect to bond prices or prices that were
12 set by IDC?

13 A. My recollection was prices were kept static or the same.

14 Q. Thank you. Now Mr. Stumberger, did you believe that the
15 prices that were currently at IDC at that time were justifiable
16 based on market conditions?

17 A. The prices at that time were above market.

18 Q. Now at some point did you begin meeting with folks from the
19 SEC about the events at Live Well?

20 A. Yes.

21 Q. Do you remember when your first conversation was?

22 A. My recollection was November 2017.

23 Q. And at that point, were you still working at Live Well?

24 A. Yes.

25 Q. At some point did you leave Live Well?

L4FTHIL2

Stumberger - Direct

1 A. Yes.

2 Q. When was that?

3 A. March 2019.

4 Q. Is Live Well still in operation?

5 A. No.

6 Q. At some point did you begin meeting with the U.S.

7 Attorney's Office about this?

8 A. Yes.

9 Q. Were you truthful in those meetings?

10 A. Yes, other than to personal questions.

11 Q. What were those personal questions as to which you weren't
12 truthful?

13 A. Two personal questions related to relationships outside --
14 in any form outside the context of marriage, and other one was
15 related to prior drug use. I admitted to the other
16 information.

17 Q. Why did you lie about those things?

18 A. To protect my family. I am married and have three young
19 children at home. It's embarrassing.

20 Q. At some point did the government learn that you lied about
21 these things?

22 A. Yes.

23 Q. How did they learn you lied about that?

24 A. I voluntarily corrected the answers.

25 Q. Why do you do that?

L4FTHIL2

Stumberger - Direct

1 A. Because everything I say has to be the truth. You can't
2 lie about anything.

3 Q. Now you testified earlier that you're testifying pursuant
4 to a cooperation agreement with the government, is that right?

5 A. Yes.

6 Q. And you pled guilty to certain crimes pursuant to that
7 cooperation agreement?

8 A. Yes.

9 Q. Why did you plead guilty to those crimes?

10 A. Because I'm guilty.

11 Q. Have you been sentenced yet?

12 A. No.

13 Q. What is your understanding of the maximum possible sentence
14 you're facing?

15 A. 105 years.

16 Q. Do you expect there may be a financial component to your
17 sentence?

18 A. Yes.

19 Q. What are you required to do under your cooperation
20 agreement with the government?

21 A. Tell the truth and appear when asked.

22 Q. What is your understanding of what the United States
23 Attorney's Office will do if you live up to those obligations?

24 A. Receive a 5K1 letter.

25 Q. Sorry, what would the U.S. Attorney's Office do?

L4FTHIL2

Stumberger - Direct

1 A. If I live up to my obligations?

2 Q. Yes.

3 A. Potentially receive a 5K1 letter.

4 Q. Would the U.S. Attorney's Office receive the letter or
5 write the letter?

6 A. Write the letter.

7 Q. Do you have an understanding of what would be in that
8 letter if the U.S. Attorney's Office wrote it?

9 A. Yes.

10 Q. What is your understanding of what would be in it?

11 A. Details of the crimes committed and details of the
12 cooperation and help I provided.

13 Q. And to your understanding, who does that letter go to?

14 A. It goes to the judge.

15 Q. If the government submits that letter, what effect does it
16 have on the possible sentence you face?

17 A. It potentially reduces the sentence.

18 Q. If the government writes that letter, does it mean that the
19 judge will necessarily give you a lower sentence?

20 A. No.

21 Q. Who ultimately will decide your sentence?

22 A. The judge.

23 Q. And have you been made any promises are guarantees about
24 what your sentence will be?

25 A. No.

L4FTHIL2

1 Q. To your understanding, does anyone beside the judge decide
2 your sentence?

3 A. No.

4 MR. HARTMAN: Your Honor, could I have one moment?

5 THE COURT: Yes.

6 (Pause)

7 MR. HARTMAN: No further questions.

8 THE COURT: All right. Thank you. Would you like to
9 take a morning break now before you begin your
10 cross-examination?

11 MR. DUSING: It would be a good time.

12 THE COURT: Why don't we do that. Please remember
13 keep an open mind, don't discuss the case. Thank you.

14 (Jury not present)

15 (Continued on next page)

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L4FTHIL2

1 THE COURT: You can step down.

2 I want to discuss one issue with all of you. I think
3 realistically we'll start at 11:30. We would have shorter
4 breaks except with Covid we have to move jurors to different
5 places.

6 MR. HARTMAN: Your Honor, while everyone is here,
7 could I note for Mr. Stumberger that he can't have any
8 communication with government counsel since he's now on cross,
9 or the agent?

10 THE COURT: Okay, thank you, that's clear.

11 (Witness not present)

12 THE COURT: I did want to tell you that a juror said
13 something to my deputy, she said that the terms were very hard
14 to follow and she wanted some type of diagram. She didn't use
15 the word "demonstrative," but she was trying to understand all
16 the financial terms and customers and she said something about
17 a pie chart.

18 Number one, I'm telling you that to let you know that
19 statement was made. I know you all tried to introduce a
20 demonstrative but there was an objection to it. So my question
21 is: Is there a way for the parties to get together maybe over
22 lunch and at least put the terms together that are not in
23 dispute? And either that could be introduced by way of
24 stipulation -- I understand you had a dispute about some of the
25 terminology, but I suggest whatever you can do to constantly be

L4FTHIL2

1 reminding these jurors of the very basic terms at issue,
2 including, as she noted, "customers," I encourage you to work
3 together to see if you could create some kind of glossary, that
4 would be helpful.

5 MR. DUSING: I plan to use the white board today for
6 this very reason, so hopefully I could clear up some confusion,
7 but we could have discussions as well.

8 THE COURT: I will see you back shortly. Thanks.

9 (Recess taken)

10 MR. DUSING: Your Honor, may I raise one issue?

11 THE COURT: Yes.

12 MR. DUSING: It would be my intention to use the white
13 board, but when I do that, I recognize I would have to use my
14 mask, so I will put my mask on when using the white board.

15 THE COURT: Sure. Now there's no one in the front
16 row, but make sure you're not within six feet of anyone when
17 you're doing that. Thank you.

18 (Continued on next page)

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L4FTHIL2

Stumberger - Cross

1 (Jury present)

2 THE COURT: As you can see, we have done a lot to
3 ensure the safety of the courthouse. Normally the jury box is
4 over here, but we cleared off that section so you could be
5 safely distanced.

6 MR. DUSING: May I proceed, your Honor?

7 THE COURT: Yes, thank you.

8 CROSS-EXAMINATION

9 BY MR. DUSING:

10 Q. Good morning, Mr. Stumberger.

11 Can you hear me, sir?

12 A. Yes, sir.

13 Q. My name is Ben Dusing, I'm representing Michael Hild.

14 The first thing I want to do is talk about some of
15 these terms that you used to clarify some things.

16 MR. DUSING: Your Honor, may I step out?

17 THE COURT: Yes, you may.

18 Q. Mr. Stumberger, can you see the white board here, sir?

19 A. Yes.

20 Q. We mentioned some terms this morning, Mr. Stumberger, and I
21 want to make sure we know who we're talking about.

22 So you used the term IDC. Do you recall that
23 testimony?

24 A. Yes.

25 Q. And do I understand correctly that this stands for

L4FTHIL2

Stumberger - Cross

1 Interactive Data Company?

2 A. Correct.

3 Q. And it is the case, is it not, that they are a third party
4 independent valuation company, is that right?

5 A. Yes.

6 Q. And what they do, as far as you understand, is to
7 independently value hard to value securities, is that right?

8 A. Can you repeat that?

9 Q. Sure. What IDC does is to independently value hard to
10 value securities?

11 A. My understanding of IDC is they provide valuation services
12 for hard to value securities and not hard to value securities,
13 securities across the spectrum.

14 Q. Fair enough. Let me ask this way: This is a subscription
15 service, is it not?

16 A. Yes.

17 Q. And they publish various prices and valuations of various
18 securities, is that right?

19 A. Yes.

20 Q. And some of those may be easier to value than others, but
21 among the securities that they value, at least during the
22 relevant time, were the CUSIPs, these bonds that we talked
23 about, is that right?

24 A. Yes.

25 Q. So that's IDC.

L4FTHIL2

Stumberger - Cross

1 Now to be clear, at the beginning -- and we'll get to
2 have a timeline here. At the beginning, IDC did not price or
3 value -- it did not publish a value of all of the CUSIPs
4 purchased by Live Well, is that right?

5 A. Sorry, could you repeat that?

6 Q. Sure. At the time of the transaction whereby Live Well
7 purchased these CUSIPs -- we'll get to that in a second --
8 these bonds from Stifel, IDC was not publishing a value or a
9 price for all of those CUSIPs, isn't that right?

10 A. That's correct.

11 Q. Thank you, sir.

12 Now I want to talk about CUSIPs. Do you happen to
13 know what that acronym stands for?

14 A. CUSIP?

15 Q. Yes, sir.

16 A. I don't.

17 Q. I don't either. But for present purposes, when we say
18 CUSIP, can we think of that as one of these bonds?

19 A. Yes.

20 Q. Okay. So if I wrote CUSIP equals bond on this white board,
21 would that be a fair thing?

22 A. In my opinion, yes.

23 Q. Then we talked about IDC, and that's -- if I called that a
24 pricing service or valuation service, would that be accurate in
25 your mind, sir?

L4FTHIL2

Stumberger - Cross

1 A. Yes.

2 Q. Would it be fair to write "independent valuation service?"

3 A. Yes.

4 Q. So you mentioned some other names as well. Now you

5 mentioned in your testimony yesterday and today "repo lenders."

6 Do you recall that testimony, sir?

7 A. Yes.

8 Q. And I believe over the course of your testimony yesterday
9 and today you mentioned specific repo lenders, is that right,
10 sir?

11 A. Yes.

12 Q. So for example, you mentioned Wedbush. Do you recall your
13 testimony about that, sir?

14 A. Yes.

15 Q. So if I just made a list of the repo lenders that you
16 mentioned, would that be fair, sir?

17 A. Sure.

18 Q. So you got Wedbush. I believe you mentioned Mizuho?

19 A. Yes.

20 Q. I believe you mentioned -- is it Guggenheim?

21 A. Guggenheim was one of the lenders at a period of time, yes.

22 Q. Fair if I put them on the list here?

23 A. Sure.

24 Q. You mentioned Nomura. Do I have this right?

25 A. Yes.

L4FTHIL2

Stumberger - Cross

1 Q. Were they also a repo lender?

2 A. Yes.

3 Q. Others I might be forgetting, sir?

4 A. ICBC.

5 Q. Very good. Which I believe stands for the Intercontinental
6 Bank of China, is that right, sir?

7 A. Right.

8 Q. Is it all right if I write ICBC?

9 A. Yes.

10 Q. I don't recall whether you used the term Mirae.

11 A. Mirae, yes.

12 Q. They're also a repo lender, sir?

13 A. Yes.

14 Q. Now if I sort of indicate like this that these are repo
15 lenders, would that fairly characterize things, Mr. Stumberger?

16 A. Yes.

17 Q. Now in your testimony I believe you indicated that all repo
18 lenders are not alike in this way, at least, not all of them
19 use IDC, the independent valuation service, to value the bond
20 collateral for their lending decisions. Do I have that right,
21 sir?

22 A. Yes.

23 Q. And so from my list -- and I'm sorry but I'm not quite sure
24 where to stand -- can we agree Wedbush used IDC, is that right,
25 sir?

L4FTHIL2

Stumberger - Cross

1 A. Yes.

2 Q. Mizuho uses IDC, is that right, sir?

3 A. Yes.

4 Q. Guggenheim, do they use IDC, sir?

5 A. My recollection is yes.

6 Q. Okay. Nomura does not use IDC, is that right?

7 A. Correct.

8 Q. If I put a little star, a little asterisk to remind of us,
9 that would that be okay?

10 A. Sure.

11 Q. Hopefully we can all remember that that is not use IDC.

12 Now ICBC, they do use IDC, correct, sir?

13 A. Yes.

14 Q. Then this Mirae, do they use IDC? They do, yes?

15 A. Yes.

16 Q. So I want to make sure I have this accurate,
17 Mr. Stumberger. Can you see that, sir?

18 A. I can.

19 Q. So of all these repo lenders, we have got Wedbush, Mizuho,
20 Guggenheim, ICBC, Mirea, they are repo lenders that do not use
21 IDC, and we have Nomura that does. Fair?

22 A. I think you have it reversed.

23 Q. I may have. Nomura is the only one of these repo lenders
24 that does not use IDC?

25 A. Correct.

L4FTHIL2

Stumberger - Cross

1 Q. Thank you. So we used those terms yesterday and today.

2 Now we have also heard the term Stifel, yes?

3 A. Yes.

4 Q. And just to be clear, who is Stifel?

5 A. Stifel Financial is an investment bank in the securities
6 dealing.

7 Q. So if I write Stifel -- well, hopefully we can remember
8 this. Stifel is your former employer prior to Live Well, is
9 that right, sir?

10 A. Correct.

11 Q. And the circumstances under which you came to Live Well
12 involved the transaction between Stifel and Live Well involving
13 the bonds, yes?

14 A. Yes.

15 Q. And remind us when that was, sir.

16 A. That was August 2014.

17 MR. DUSING: With the Court's permission, I would
18 erase the board here as we move on to something else.

19 THE COURT: Okay.

20 MR. DUSING: Your Honor, if I may endeavor to have
21 some assistance, I could probably make better use of my time.

22 THE COURT: Sure.

23 Q. So could we talk about how these bonds work for a second?

24 A. Sure.

25 Q. I am going to use bonds and CUSIPs interchangeably. Is

L4FTHIL2

Stumberger - Cross

1 that fair?

2 A. Sure.

3 Q. I am going to try to simplify this, but don't let me
4 simplify it too much. Do I understand correctly these bonds or
5 CUSIPs are securities that basically it's an asset that
6 generates a stream of income -- an unknown stream of income
7 over an unknown period of time, is that fair, sir?

8 A. Yes.

9 Q. So just to illustrate that, these bonds -- this is the
10 bond, you know that it's going to generate income for some
11 period of time but you don't know how long, it could be a short
12 period of time, it could be much longer. Fair?

13 A. Yes.

14 Q. And for however long that period is, it's indeterminate,
15 it's unknown how much revenue at any given time is going to be
16 generated. Is that fair, sir?

17 A. Yes.

18 Q. Can we agree that at least at the intrinsic value, if you
19 will, of these bonds is a function of how much revenue is going
20 to be generated by the bonds over the life of the bonds?

21 A. I would answer that as my definition of intrinsic value is
22 a depiction, an opinion of what the asset's true value is.

23 Q. Well, your understanding -- help me out here, but the value
24 of this asset, this bond, is how much money I'm going to get
25 from it, if I'm the holder. Do you agree?

L4FTHIL2

Stumberger - Cross

1 A. Yes.

2 Q. And that is unknown, do you agree?

3 A. Yes.

4 Q. So Mr. Stumberger, can we agree that because we're talking
5 about an asset, the value of which is the right to an unknown
6 stream of income for an unknown period of time, these are very
7 hard to value. Would you agree with me, sir?

8 A. These bonds use inputs and assumptions to create a
9 valuation.

10 Q. So again, my question is simply: Do you agree these bonds
11 are very hard to value?

12 A. I would say that these bonds are, in my opinion, among the
13 most complex in fixed income.

14 Q. Did I hear that correctly, the bonds are --

15 A. Among the most complex in fixed income.

16 Q. Can I infer then that you agree that they are difficult to
17 value?

18 A. My opinion is they are not hard to value, they're very
19 complex and it takes expertise.

20 Q. So could we agree on this, these bonds -- the life of these
21 bonds could range anywhere from 10 years to 40 years?

22 A. I believe it's 50.

23 Q. Is that 50?

24 A. 50.

25 Q. Okay. And the value, the amount of cash generated during

L4FTHIL2

Stumberger - Cross

1 that time can be a lot or a little, there's a big difference
2 between these two, right?

3 A. Correct.

4 Q. So we'll get to this, a market definition of these aside,
5 would you agree it is very difficult to predict how much
6 revenue the holder of one of these securities is going to
7 derive from the security over the life of the security?

8 A. It's impossible to predict that times zero.

9 Q. We'll take this down. But before I do, you've testified
10 yesterday and today about these CUSIPs, these bonds. To be
11 clear, we're talking about these securities, these all of these
12 assets, these are the bonds that we're talking about, yes, sir?

13 A. Yes.

14 Q. Now let's talk about how these bonds are bought and sold.
15 You testified yesterday about your background. Do I understand
16 correctly that your background is as a trader, sir?

17 A. Some of my experience is in trading, yes.

18 Q. Is it fair to say that prior to you joining Live Well that
19 your experience was on the so-called sell side?

20 A. Yes.

21 Q. And that once you joined Live Well, it was a buy side kind
22 of situation, would you agree?

23 A. Yes.

24 Q. Would you agree that those two things are very different?

25 A. They're different in certain respects.

L4FTHIL2

Stumberger - Cross

1 Q. Understood. Well, what about this respect, as a seller of
2 these bonds you don't have to think about how much they are
3 worth over the life of the bond knowing that you're going to
4 sell them. Fair?

5 A. That's fair.

6 Q. As compared to if you're a buyer who intends to hold these
7 bonds for the life of these bonds, that is something that is
8 absolutely very important. Would you agree, sir?

9 A. Sorry, could you repeat that?

10 Q. Yes. If you're a buyer of these bonds and you're going to
11 hold them for the life of the bonds, the ability to value them,
12 to analyze how much revenue they're going to generate for how
13 long is a very important thing.

14 A. Yes.

15 Q. Can we agree that -- withdrawn.

16 So I want to talk about the market for these bonds.
17 You mentioned the term "market" a number of times. Can we
18 agree that the market for these bonds can separately be
19 described as a primary market and a secondary market?

20 A. Yes.

21 Q. Correct me if I get this wrong here, but these bonds are
22 comprised -- well, is it fair to characterize these bonds,
23 these CUSIPs, as a whole bunch of bonds kind of stapled
24 together?

25 A. Yes. The CUSIPs we're talking about are comprised of

L4FTHIL2

Stumberger - Cross

1 underlying bonds pulled together.

2 Q. And that's what we kind of mean when we talk about
3 securitizing them, is that right?

4 A. Yes.

5 Q. And so you have these securities which are comprised of a
6 whole bunch of underlying bonds, and these are produced, if you
7 will, by I guess mortgage originators, issuers?

8 A. The underlying bonds?

9 Q. Yes, sir.

10 A. Yes.

11 Q. And then they are stapled together by whom, sir?

12 A. By the issuer, primary dealer.

13 Q. At some point in time these bonds, they're initially
14 offered into the primary market by a broker-dealer, is that
15 right, sir?

16 A. Yes.

17 Q. So if I wrote B/D on this board, can we agree that will
18 stand for broker-dealer?

19 A. Sure.

20 Q. So this is where these bonds originate.

21 Now the sale from the broker-dealer, the first sale
22 into the market, can we call that the primary market?

23 A. Yes.

24 Q. And these bonds are sold by the broker-dealers to
25 investors, are they not, sir?

L4FTHIL2

Stumberger - Cross

1 A. Yes.

2 Q. So if I write investor --

3 THE COURT: I think you might by bumping the
4 microphone a little bit.

5 THE WITNESS: Sorry.

6 THE COURT: I know we're asking you to lean into it
7 but --

8 Please proceed.

9 Q. So Mr. Stumberger, if I write "investor" here, would that
10 be a fair kind of depiction?

11 A. Sure.

12 Q. Okay. I will write "investor one," if I can, to show that
13 this is the first -- this is the bond moving into the market.
14 Fair?

15 A. Yes.

16 Q. Now can we agree that in this primary market there are a
17 number of interested -- there are a number of investors, not
18 too much, but there are some in your experience, is that right?

19 A. The number of investors has shifted over time, yes.

20 Q. Notwithstanding that shift, in your experience, at any
21 given time there's at least some of these, fair?

22 A. Yes.

23 Q. In fact, Live Well would be an example of an investor,
24 would it not, sir?

25 A. Yes.

L4FTHIL2

Stumberger - Cross

1 Q. So we'll get to this, but during the time that you were
2 there running the department, you would look for these new
3 issue bonds from broker-dealers to analyze them, and ultimately
4 Live Well bought, as investor one here, a number of these bonds
5 from broker-dealers. Fair?

6 A. Yes.

7 Q. And that happened from the time period from September 2014
8 when you came aboard Live Well until at least until 2017,
9 correct?

10 A. Acquisitions of new bonds I believe ceased at the end of
11 2016, but around that timeframe.

12 Q. So at the end of '16. Okay, fair.

13 Now in theory, an investor who has purchased one of
14 these bonds could sell it to another investor, in theory. Do
15 you agree, sir?

16 Do I need to restate my question, Mr. Stumberger?

17 A. No. I don't know the answer technically if an investor can
18 sell bonds to another investor. It's not the normal course of
19 business. The normal course of business is where an investor,
20 when they want to sell, they sell back to the community of
21 broker-dealers.

22 Q. So let's start with this: Would you agree with me that
23 there really is not -- if there is any market at all, we call
24 this a secondary market, there is, if any market at all, not
25 much of a market for investors to sell to?

L4FTHIL2

Stumberger - Cross

1 A. I would answer that this way: Again, investors when they
2 want to sell their securities, the normal customary business
3 practice is for them to sell them to the broker-dealers, not to
4 other investors.

5 Q. But it is really hard to sell -- once an investor purchased
6 a bond from a broker-dealer, it's your experience, correct me
7 if I'm wrong, sir, most of these investors are holding these
8 securities for the life of the securities, isn't that right?

9 A. Historically holders of these bonds have been long-term
10 holders. The segment of investors that aren't are typically
11 hedge funds, but pension funds, insurance companies typically
12 are long-term holders.

13 Q. Is that generally a yes then?

14 A. Yes.

15 Q. So when we talk about market, can we agree that it's very
16 important to distinguish between the primary market and the
17 secondary market? Do you agree with me, sir?

18 A. I'm sorry, could you repeat that question?

19 Q. Sure. When we talk about market, isn't it very important
20 to distinguish between the primary market and the secondary
21 market?

22 A. It certainly should be. In English, they're different.

23 Q. And I know I'm painting with a broad brush, but the primary
24 market has some liquidity to it -- that's a term I should talk
25 about in a second -- not so much the secondary market. Fair,

L4FTHIL2

Stumberger - Cross

1 sir?

2 A. It would help if I define my opinion of what those two
3 things mean. Primary market is the new issuance of securities
4 from dealers to investors. That's the primary market. The
5 secondary market is after the fact. So if there's trading of
6 bonds that want to be traded after the new issuance period,
7 that's secondary trading.

8 Q. From here forward let's go with the definitions that you
9 just defined. Using that definition, if you're an investor and
10 you bought one of these new issue bonds on the primary market,
11 you may not be able to later sell it even if you wanted to.

12 Would you agree, sir?

13 A. I would disagree with that. My opinion is an investor
14 would be able to sell the bond, but at any given point in time
15 the price is indeterminate. You can't determine which price it
16 would be sold at, but it could be sold.

17 Q. Fair enough. Let me clarify. I guess in a sense you could
18 sell anything. There would be some price at which you could
19 sell it, but it would not necessarily reflect its full value.

20 Would you agree, sir?

21 A. Reflect what?

22 Q. It would not necessarily reflect its full value. Would you
23 agree, sir?

24 A. There's no way of telling where a bond could be sold at any
25 given point in time.

L4FTHIL2

Stumberger - Cross

1 Q. Or even if you could sell the bond, right?

2 A. From my experience, there would always be a bid available.
3 I don't remember a specific point that wasn't the case. But
4 the price which you could get, you can't know that up front.

5 Q. Understood. It's likely to be way less than the customary
6 pricing, right?

7 A. The what pricing?

8 Q. It's likely to be way less than the circumstances you
9 described than kind of a typical primary market transaction.

10 MR. HARTMAN: Objection, vague, "typical."

11 THE COURT: I'll allow the question. Answer it as
12 best you can. If you can't answer it, say that.

13 A. Repeat the question?

14 Q. Sure. Let me try and do it this way: Once you bought one
15 of these bonds as an investor, it's likely to be very difficult
16 to sell it if you ever want to. Is that a fair statement?

17 A. No. I just said that if you want, you could sell it, you
18 just wouldn't know what the price would be.

19 Q. Let me rephrase. If you one day want to sell it, you're
20 likely to be able to sell it, if all, at a deep discount. Is
21 that fair?

22 A. That's one possibility.

23 Q. So when we talk about the market concepts, it's a big -- we
24 need to be careful, I think we recognize, to distinguish
25 between the primary market and secondary market. Can we agree

L4FTHIL2

Stumberger - Cross

1 to do that moving forward in our conversation today?

2 A. Yes.

3 Q. Now let's try and get a sense of the timeline. Can I ask
4 you: You knew Mr. Hild prior to the time of the Stifel
5 transaction, isn't that right?

6 A. Correct.

7 Q. Do you recall when about you met Mr. Hild?

8 A. My recollection of the first time was in 2006.

9 Q. Okay. And where were you in 2006?

10 A. I worked at Goldman Sachs.

11 Q. What was Mr. Hild doing at that time, if you recall?

12 A. Mr. Hild had just launched Live Well Financial.

13 Q. Your understanding of Live Well Financial at that time was
14 what?

15 A. A mortgage lender.

16 Q. Was it on the reverse side at least in part?

17 A. Yes, reverse mortgages.

18 Q. At Goldman Sachs was your work -- did that involve in some
19 way the reverse side of the mortgage business?

20 A. Yes. When I was at Goldman Sachs there was an effort to
21 understand the sector and to create business, develop business.

22 Q. And in your interactions with Mr. Hild, was that in fact an
23 effort to create business for Goldman?

24 A. Yes.

25 Q. And can you just briefly explain how?

L4FTHIL2

Stumberger - Cross

1 A. My recollection was Goldman Sachs, like other -- their peer
2 group, they are in the business of acquiring mortgage loans,
3 mortgage loans, reverse mortgage loans. Goldman was just
4 getting up to speed, and my recollection was there would be
5 business there, potentially, at some point. And at some point
6 I have a recollection where Goldman was interested in
7 purchasing a reverse mortgage lender or a platform and Live
8 Well was one of the companies there were talks about doing
9 that.

10 Q. So were those discussions separate and apart from your
11 discussions with Mr. Hild about acquiring his reverse mortgage
12 production?

13 A. Those were separate discussions.

14 Q. Nonetheless, can we agree that you had discussions with
15 Mr. Hild -- you met in 2006 and you had interaction with him
16 over a period of years, is that fair?

17 A. Yes.

18 Q. And did you continue to have interaction with Mr. Hild from
19 the point in time when you met him in 2006, under the
20 circumstances that you mentioned, all the way through until
21 2014 when the Stifel transaction occurred?

22 A. I remember meeting Michael around the 2012 time period, I
23 don't know the exact date. It was around there, meeting him.

24 Q. I don't mean to imply it was constant or regular
25 communication, but over the years from 2006 through the time of

L4FTHIL2

Stumberger - Cross

1 the Stifel transaction in 2014, from time to time did you have
2 interaction with Mr. Hild?

3 A. That's fair.

4 (Continued on next page)

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L4fnhil3

Stumberger - Cross

1 Q. So am I correct, sir, in that when in July or August of
2 2014 you reached out to Mr. Hild about the business proposition
3 that you testified about, that wasn't out of the blue in a big
4 picture sense? Yes?

5 A. That's correct.

6 Q. OK. So, those discussions proceeded fairly quickly, did
7 they not?

8 A. That's my memory, yes.

9 Q. I want to talk about the Stifel transaction and make sure I
10 understand it in a moment. But can we agree that generally the
11 Stifel transaction, which saw the bonds managed by you at
12 Stifel acquired by Live Well and you being employed with
13 Stifel, newly at Live Well, that transaction was introduced and
14 completed within less than two months, sir?

15 A. It was less than two months, yes.

16 Q. And can we talk about that transaction for a second?

17 A. Sure.

18 Q. So, I want to simplify this as much as possible, but the
19 Stifel transaction can be viewed as such, Live Well and
20 Mr. Hild as its CEO acquired certain things and effectively
21 certain people from Stifel. Is that a fair way to put it?

22 A. Yes.

23 Q. So if I put "Stifel" over here and I put "LWF" over here,
24 which stands for Live Well Financial -- I am a very poor artist
25 here, so forgive me, but I am just going to write "People" and

L4fnhil3

Stumberger - Cross

1 "Things." Fair?

2 A. Yes.

3 Q. Let's talk about these things first. Can we agree that the
4 things that Stifel had that were acquired by Live Well were --
5 I forget the exact number but maybe 15 CUSIPs, 15 bonds?

6 A. Roughly. I don't remember the exact number, but roughly.

7 Q. Understood. My numbers are intended to be rough.

8 A. OK.

9 Q. Less than 20? Can we agree on less than 20?

10 A. Yes.

11 Q. OK. So if I write "CUSIPs" right here, does that sort of
12 accurately -- however many the number is, we'll go with that?

13 A. Yes.

14 Q. Now, in terms of people when you originally reached out to
15 Mr. Hild, do you remember when that was in 2014?

16 A. It was summer of 2014. I don't remember the exact date,
17 whether it was June, July or early August.

18 Q. OK. Very good. So, if it was July, let me ask you this:
19 Do you remember when about the transaction was completed?

20 MR. HARTMAN: Objection to the "if it was July." I
21 think he testified he didn't remember exactly.

22 THE COURT: Why don't you rephrase it.

23 MR. DUSING: Sure. I can move on if it's easier.

24 THE COURT: All right.

25 BY MR. DUSING:

L4fnhil3

Stumberger - Cross

1 Q. Do you recall by when the transaction was completed, when
2 it was consummated?

3 A. My recollection was the end of August of 2014.

4 Q. OK. If I use September 1 as a date, is that fair?

5 A. Sure.

6 Q. Now, when you originally reached out to Mr. Hild to propose
7 this deal, who were the people that were contemplated as being
8 part of the acquisition?

9 A. The team at Stifel contemplated on moving to Live Well were
10 myself, Richard Boyd, Dan Foster, Ernie Calabrese.

11 Q. OK. So we've got -- can I use "DS" for you, sir, as Darren
12 Stumberger?

13 A. Sure.

14 Q. Just to be clear, were you in charge?

15 A. Of the team at Stifel, yes.

16 Q. And then your team was, you said Ernie Calabrese?

17 A. Yes.

18 Q. And did you say Dan Foster, sir?

19 A. Yes.

20 Q. And you mentioned another name there. What was that name,
21 sir?

22 A. Richard Boyd.

23 Q. OK. Now, it is the case, is it not, that Mr. Boyd was sort
24 of your top assistant, chief lieutenant? Fair to describe him
25 as such?

L4fnhil3

Stumberger - Cross

1 A. Rich Boyd worked for me on managing our position and
2 trading.

3 Q. OK. He was an important part of this team. Would you
4 agree?

5 A. He was.

6 THE COURT: Do you want to move the mic closer to you.
7 Some people are going to have trouble hearing you, Mr. Dusing.
8 Thank you.

9 MR. DUSING: I will try and speak up as well, your
10 Honor.

11 THE DEPUTY CLERK: People listening in can't hear any
12 of your questions.

13 MR. DUSING: I understand. I was trying to speak
14 louder this way.

15 THE COURT: Maybe walk there and then walk to the
16 board. I leave it to you.

17 MR. DUSING: Very good. Thank you.

18 BY MR. DUSING:

19 Q. Mr. Boyd, was there a hierarchy in this team?

20 A. There was a loose one. I ran the desk. Rich was kind of
21 my right-hand man. Dan reported or worked for Rich and me, and
22 Ernie reported to me, but Ernie focused on more of the finance
23 and relationship aspects of the business.

24 Q. OK. So we've got people, we've got things. Is it fair to
25 characterize a proposal that you reached out to Mr. Hild about

L4fnhil3

Stumberger - Cross

1 as Live Well acquiring these people and those things? Yes?

2 A. Is it fair that's what the transaction was?

3 Q. No. The business prop -- the idea. Your idea.

4 A. Yes, yes.

5 Q. OK. And, generally, was it contemplated that the same
6 people would continue managing the same things as Live Well
7 more or less just as they had at Stifel?

8 Is that fair to say?

9 A. Yes.

10 Q. All right. Now let's talk about how they were managed at
11 Stifel. You mentioned Stifel was a broker/dealer. Do I
12 understand that correctly?

13 A. Can I clarify my last statement?

14 Q. Of course, yes, sir.

15 A. The same people managing the same things, yes. What's
16 important to understand is the financing used for the position,
17 that was primarily different.

18 Q. Understood, sir. You are talking now about how the
19 position was financed at Stifel relative to how it was financed
20 at Live Well, sir?

21 A. Yes.

22 Q. And at Stifel it was -- let me ask you. Repo financing was
23 at times part of the financing of the position, is that right,
24 sir?

25 A. At Stifel from time to time, and I don't recall when, repo

L4fnhil3

Stumberger - Cross

1 financing was used.

2 Q. OK. But do I gather that it was not necessarily the norm
3 in the Stifel days?

4 A. That's correct.

5 Q. Whereas can we agree, fast forwarding, it became sort of
6 the primary mechanism of financing the position once you and
7 the CUSIPs ended up at Stifel -- at Live Well?

8 A. Yes. There was repo financing and bank facility financing,
9 but repo was the dominant financing.

10 Q. At the time you approached Mr. Hild about this transaction,
11 can we agree that wasn't necessarily the plan?

12 A. The plan for Live Well and the type of financing?

13 Q. Yes.

14 A. My recollection was that repo financing was contemplated.

15 Q. OK. It certainly got -- there was a point in time when
16 repo financing became a necessity, isn't that right, in
17 connection with the transaction itself? Isn't that right, sir?

18 A. I don't have a recollection of discussions for the
19 financing of the portfolio other than repo financing. I don't
20 have any recollection of that.

21 Q. OK. Do you happen to recall as you sit here today how the
22 purchase price of the bonds acquired by Live Well in the
23 transaction were financed?

24 A. How the trade was financed?

25 Q. How the purchase by Live Well of the bonds from Stifel was

L4fnhil3

Stumberger - Cross

1 financed?

2 A. Yes.

3 Q. What's your understanding of that?

4 A. It was financed by Mizuho, was one of the repo lenders, and
5 a bank, Zenith Bank.

6 Q. Understood. Is Zenith Bank a repo lender?

7 A. No.

8 Q. OK. And Zenith Bank, is it not, is a so-called warehouse
9 lender? Is that a fair term?

10 A. I don't -- it's a bank lending facility. It was called a
11 warehouse lender with differences.

12 Q. Very good. How about I do it this way. We'll agree zenith
13 is a nonrepo lender. Can we agree on that?

14 A. Correct.

15 Q. Zenith was sort of the historical banking relationship for
16 Live Well at the time of the transaction, would you agree, sir?

17 A. That's my memory, recollection, yes.

18 Q. OK. And so one thing we haven't mentioned here is -- we
19 talked about the people, we talked about the things. How much,
20 what was the purchase price that Live Well paid to Stifel for
21 these bonds?

22 A. My recollection was it was in the context of 45 million --
23 45 or 50 million dollars.

24 Q. If I write "50 million" on here, are you confident it's
25 sort of in that ballpark?

L4fnhil3

Stumberger - Cross

1 A. Yes.

2 Q. So, Stifel gets 55 million, Live Well gets the CUSIPs or
3 bonds; is that right, sir?

4 A. Yes.

5 Q. OK. Now, that's how the things got to Live Well, yes?

6 A. Yes.

7 Q. Now, the people, you know, Live Well did not technically
8 purchase you and your team, but can we say that you stopped
9 working for Stifel at the time of the transaction and you
10 started working for Live Well?

11 A. Yes.

12 Q. OK. And so these guys, including yourself, minus Mr. Boyd,
13 ended up at Live Well. Do we agree, sir?

14 A. Yes.

15 Q. Now, over the course of the execution of this transaction,
16 can we agree that certain things changed?

17 A. Pre-Live Well or during the transition period?

18 Q. Over the course of the transaction -- so let me ask it this
19 way: When you originally reached out to Mr. Hild and proposed
20 this idea, it was contemplated that Mr. Boyd would be joining
21 you and your other team members at Live Well, correct?

22 A. Yes.

23 Q. OK. Fast forward to the end of the transaction. Mr. Boyd
24 did not in fact join you at Live Well, correct?

25 A. That's correct.

L4fnhil3

Stumberger - Cross

1 Q. So, can we agree that at some point between those two
2 points in time at least that's one thing that changed? Yes?
3 A. Yes.

4 Q. OK. And it is the case that Mr. Boyd would ultimately end
5 up at a competitor of Live Well; is that right, sir?

6 A. That's correct.

7 Q. OK. Everybody else came with you, though, yes?

8 A. Yes.

9 Q. All right. Another thing that changed over the course of
10 the transaction is how Live Well was going to pay this 55
11 million for the bonds, isn't that right, sir?

12 A. I don't have a recollection on what changed. I remember
13 how it was ultimately financed and how it happened. I don't
14 have a recollection of how anything changed.

15 Q. Fair, fair, fair. You recollect, though, that part of the
16 ultimate -- however it was financed in the end, part of that
17 financing was repo financing, correct?

18 A. Yes.

19 Q. And specifically, if I recall, was it not Mizuho?

20 A. That's correct.

21 Q. All right. Now, it is the case, is it not, that prior to
22 this transaction that Live Well had never used repo financing
23 before?

24 MR. HARTMAN: Objection. Foundation.

25 MR. DUSING: I can rephrase, your Honor.

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Stumberger - Cross

1 THE COURT: Why don't you. Thank you.

2 MR. DUSING: I'm sorry?

3 THE COURT: Why don't you. Thanks.

4 MR. DUSING: OK.

5 BY MR. DUSING:

6 Q. Mr. Stumberger, based on your conversations with Mr. Hild
7 over the course of the transaction, did you have an
8 understanding about their financial relationships, their
9 financing relationships?

10 MR. HARTMAN: Objection. Hearsay.

11 THE COURT: I will allow it, as it goes to his state
12 of mind.

13 Q. Mr. Stumberger?

14 THE COURT: You can answer.

15 A. Yes.

16 Q. Based on those conversations, did you have an understanding
17 about whether Live Well had ever used, had ever financed things
18 in the past through so-called repo lenders?

19 A. I don't recall thinking about or having conversations about
20 who Live Well used as financing partners. My general
21 recollection is they used warehouse lines for the origination
22 of mortgages. I don't remember which ones or names of them.

23 Q. OK. Very good. Now, you, however, had some relationships
24 with repo lenders based upon your time at Stifel, isn't that
25 right, sir?

L4fnhil3

Stumberger - Cross

1 A. Yes.

2 Q. And one of the relationships that you had was with Mizuho,
3 isn't that right, sir?

4 A. That's correct.

5 Q. So, over the course of this transaction, so that Live Well
6 could finance the full amount of this purchase price you
7 introduced, you facilitated an introduction of Mizuho to Live
8 Well? Is that correct, sir?

9 A. Yes. My team and I.

10 Q. OK. Fair enough. Fair enough.

11 And it is the case that ultimately that facilitation
12 was successful in that Mizuho financed part of the purchase
13 price for the portfolio; is that right?

14 A. Yes.

15 Q. OK. I should talk about that term as well. We've heard
16 the term portfolio. By portfolio, is that a fair way to
17 characterize the total amount of bonds or CUSIPs held by Stifel
18 at first and then Live Well?

19 A. Yes.

20 Q. Fair enough. All right. So that's the transaction.

21 Now I want to talk about repo financing for a moment.

22 MR. DUSING: Can I have a moment to wipe my whiteboard
23 here?

24 THE COURT: Yes.

25 BY MR. DUSING:

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Stumberger - Cross

1 Q. Maybe in the interest of time I can ask you some questions
2 as I wipe my board, Mr. Stumberger, but let me ask you, I want
3 to return to this company called IDC, this interactive data
4 company we talked about previously. As we previously
5 discussed, they become relevant generally when repo financing
6 gets involved. Would you agree, sir?

7 A. In the case of Live Well that's -- yes.

8 Q. Well, that is the case in the case of any repo lender,
9 including those that we had on our list, that uses IDC to
10 independently value these bonds, yes?

11 A. Yes. The repo lender, certain repo lenders require that
12 they get their values from an independent source and IDC is the
13 market leader.

14 Q. I'm sorry, sir, IDC is what?

15 A. Is the market leader.

16 Q. In fact, isn't their tag line, "Global leader in hard to
17 value securities," or something like that. Do you know?

18 A. I don't know.

19 Q. But if you don't use repo financing as a general rule, IDC
20 really doesn't matter. Is that fair?

21 MR. HARTMAN: Objection.

22 THE COURT: What's the basis?

23 MR. HARTMAN: Context.

24 THE COURT: All right. If you can answer that
25 question without context, do so; but if you feel like you need

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Stumberger - Cross

1 more context for the question, say that.

2 THE WITNESS: OK. Repeat the question, please.

3 MR. DUSING: Yes. Thank you.

4 I'll try and do it differently.

5 THE COURT: OK.

6 BY MR. DUSING:

7 Q. Now, once we have a repo -- the repo lenders -- let me do
8 it this way. The idea, is it not, Mr. Stumberger, is that the
9 repo lenders would require that the bonds that they're going to
10 finance be independently valued by IDC and they would lend to
11 the borrower against those values?

12 A. Yes. That's how it worked.

13 Q. OK. I want to draw this so we understand this.

14 So, you have -- if I put lender, "repo lender" up
15 here, OK, and I have "IDC" down here and I have "Live Well
16 Financial" over here -- can you see that, Mr. Stumberger?

17 A. Yes.

18 Q. And I am trying to stay out of the way of everybody at
19 once. The idea is for the repo lender to lend money to Live
20 Well Financial so that Live Well Financial can hold these bonds
21 so that Live Well can get the stream of income, indeterminate
22 as it may be, from these bonds and in part to pay back the
23 loans to the lender with interest, whatever's left over is the
24 value to Live Well?

25 MR. HARTMAN: OK. The idea of whom?

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Stumberger - Cross

1 MR. DUSING: I can rephrase, your Honor.

2 THE COURT: All right.

3 BY MR. DUSING:

4 Q. Mr. Stumberger, the relationship between these various
5 things that we've talked about, namely, the repo lenders, IDC
6 and Live Well, is one where -- let's start with this: The repo
7 lender is going lend money to Live Well Financial, yes?

8 A. Yes.

9 Q. And those funds would be used to purchase, at least in
10 overwhelming part, certain CUSIPs, bonds?

11 A. Yes.

12 Q. And those bonds would, as we've talked about, they would
13 generate revenue for an uncertain period of time in an
14 uncertain amount, yes?

15 A. Yes.

16 Q. And with that revenue, or some other way, the lender would
17 be repaid ultimately the amount borrowed, yes?

18 A. That's how it works.

19 Q. They would also get interest on the amount lent, yes?

20 A. Yes. They charge interest typically monthly.

21 Q. Very good. All right.

22 So that's kind of how this works, fair?

23 A. Yes.

24 Q. All right. Now, isn't it the case that one critical
25 feature of repo financing is that these are extremely

L4fnhil3

Stumberger - Cross

1 short-term loans, yes?

2 A. I would define the general terms of repo lending as
3 anywhere from overnight to what's mostly typical 30 days, and
4 sometimes 60, 90 days.

5 Q. OK. Did you say overnight?

6 A. Yeah.

7 Q. Can we agree that's a short-term loan?

8 A. Yes.

9 Q. OK. So anywhere from one day -- did you say 90 days, sir?

10 A. That's been my history in the market, yeah.

11 Q. OK. So let's use that. Relative to sort of what I'll call
12 traditional financing, can we agree that repo lenders, that
13 means short-term financing, anywhere from 1 to 90 days?

14 A. As a relation to -- you said traditional financing? What
15 is -- define that.

16 Q. Non-repo lending for terms of years.

17 A. Right. So, in relation to a term loan in some type of
18 facility, whether it is a bank or other, that's typically for a
19 minimum one year up to several years could, five, ten. So this
20 would be much shorter.

21 Q. Fair enough. Thank you.

22 So, when we talk about the stability of financing, can
23 we agree that when repo lenders are involved it is far less
24 stable relative to traditional kind of lending?

25 A. If you can, define what you mean by stable, stability.

L4fnhil3

Stumberger - Cross

1 Q. The length of the borrowing relationship. So, not to use
2 an analogy, but if I can, this is like buying a house and
3 getting a loan for 90 days and having to get a home loan every
4 90 days. Is that a fair characterization?

5 A. That's fair. The operational aspects of it are very
6 routine, whether it's overnight, 30 days, 60 or 90, yeah.

7 Q. Very good. It's better, you would agree, to get a 30-year
8 home loan than a nine-month home loan for that reason. Yes,
9 sir?

10 A. That would make sense, yeah.

11 Q. If you get a 90-day home loan, you better make sure that
12 bank is, you know, still there after 90 days or you might not
13 have a home. Do you agree?

14 A. Yes.

15 Q. And that's kind of the inherent risk of repo financing,
16 would you agree?

17 A. What are you inferring? The stability of it?

18 Q. If you come back in 90 days -- when I say "you," I mean
19 Live Well or Stifel or whoever the borrower is -- and whoever
20 the repo lender is decides that they don't want to lend you the
21 money anymore, you've got to find other financing, right?

22 A. That's correct.

23 Q. Whereas if you arrange financing through a traditional
24 lender for say a term of years, that's not something you have
25 to worry about, fair?

L4fnhil3

Stumberger - Cross

1 A. That's correct.

2 Q. OK. All right. So that, that's part of the repo financing
3 story. But IDC, will you agree with me that IDC comes into
4 play because I think, as you've said, the repo lender,
5 certainly the ones that we put on the list, require that the
6 bonds be priced or valued on IDC if they're going to lend money
7 to Live Well?

8 A. That's correct.

9 Q. OK. Do I understand correctly then that, but for the
10 involvement of repo financing, IDC has no relevance?

11 MR. HARTMAN: Objection. Relevance to what?

12 THE COURT: Why don't you rephrase, please.

13 MR. DUSING: I will rephrase.

14 BY MR. DUSING:

15 Q. If Live Well is financing these bonds through a lender
16 other than the repo lenders that use IDC, IDC has no bearing
17 upon the financing transaction at all, would you agree?

18 A. My recollection was the bank lenders were also reliant on
19 IDC, but I don't have perfect recollection.

20 Q. Fair enough. And I'm trying to get to the point here, and
21 I appreciate the precision. Let me try and do it this way. If
22 Live Well is financing these bonds through a lender, repo or
23 other, that does not rely on IDC, IDC has no bearing upon the
24 financing transaction? Would you agree?

25 A. Yes.

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Stumberger - Cross

1 Q. OK. But -- and I'm fast forwarding here a little bit -- in
2 relation to our story, insofar as Live Well financed these
3 bonds with the names that we had on the list, Wedbush, Mizuho,
4 Guggenheim, the other ones we mentioned, IDC did bear upon the
5 financing relationship, yes?

6 A. Yes.

7 Q. And, in fact, IDC was a critical component of the financing
8 relationship because, but for IDC pricing these bonds, the repo
9 lenders I just mentioned would not lend the money to Live Well,
10 is that right?

11 A. Generally, yes. It doesn't specify IDC in every purchase
12 agreement. It's an independent third-party pricing service,
13 but IDC was the dominant market leader.

14 Q. OK. IDC was one such --

15 A. Yes.

16 Q. All right. Can we also agree as a functional matter it was
17 IDC?

18 A. Yes.

19 Q. OK. All right. So, if Live Well wanted to finance a bond
20 through a lender such as one of these repo lenders, that
21 required the bond be listed on IDC, and to lend against that
22 value, that would be a problem if IDC did not value or price
23 that bond. Would you agree?

24 A. Yes.

25 Q. OK. Can we agree as well that it is precisely that problem

L4fnhil3

Stumberger - Cross

1 that came into the picture in connection with the acquisition
2 by Live Well of the Stifel purchase of bonds?

3 A. You're calling that aspect a problem.

4 Q. Let me rephrase. We mentioned -- I think you said there
5 was something less than 20, I think we agreed less than 20
6 bonds that were purchased by Live Well from Stifel. Would you
7 agree with me that some of, but not all of those bonds, those
8 CUSIPs, were at that time -- there was values published by IDC
9 for them? Do you agree?

10 A. It's possible. I don't have recollection of any of them or
11 some of them. I remember what happened during those
12 discussions with IDC, but I don't remember what was on IDC at
13 that time.

14 Q. Fair enough. In any event, when the dust settled here, and
15 for example, Mizuho had agreed to finance some of these, their
16 financing required that all of the bonds be priced or valued by
17 IDC. Yes?

18 A. Yes.

19 Q. OK. Not only that, because these repo loans were only for
20 up to 90 days, very short term, there had to be some sort of
21 understanding that IDC would not only price and publish prices
22 about these bonds then, but into the future; isn't that right,
23 sir?

24 MR. HARTMAN: Objection to "understanding." Among
25 whom?

L4fnhil3

Stumberger - Cross

1 THE COURT: Look, as I said before, if you can answer
2 questions yes or no, do it. But if you feel like there's
3 something in the question that makes it hard for you to answer
4 it yes or no, that it wouldn't be accurate in some way or that
5 you're confused in some way, just let me know that as well.
6 OK. Do you feel like you can answer this question as stated?

7 THE WITNESS: Can you repeat the question?

8 MR. DUSING: Yes, I think.

9 BY MR. DUSING:

10 Q. If Live Well was going to continue to finance the bonds
11 through a lender, such as one of these repo lenders, that
12 required publication of a price on IDC, it was important that
13 IDC continue pricing or valuing those CUSIPs for the
14 foreseeable future. Do you agree?

15 A. Yes.

16 Q. OK. And the reason that was important, right, was that if
17 that could not be guaranteed, it couldn't be guaranteed that
18 there would be financing for Live Well to finance these assets?
19 Do you agree, sir?

20 A. With the repo lenders that required IDC.

21 Q. Fair. With that -- my question so amended, do you agree
22 with that, sir?

23 A. I'm sorry. Repeat the full question, and I will answer.

24 Q. Let's do it this way. In connection with the Stifel
25 purchase, at some point in time you facilitated the

L4fnhil3

Stumberger - Cross

1 introduction of Live Well and Mr. Hild kind of generally to
2 Mizuho, the repo lender, is that right?

3 A. Yes.

4 Q. It is your understanding that Live Well did not have a
5 preexisting relationship with Mizuho?

6 A. Correct.

7 Q. It's your understanding that they did not have a
8 pre-existing relationship with any repo lender; is that right?

9 A. That's fair.

10 Q. OK. All right. Because repo lending was part of the
11 equation at that point in time in terms of financing the bonds,
12 and because Mizuho was a lender that required that a value be
13 published by IDC, that meant that IDC was part of this
14 transaction calculus. Do you agree?

15 A. Yes.

16 Q. OK. And, in fact, there were discussions at that time
17 initiated with IDC. Do you agree?

18 A. Yes.

19 Q. And you were in fact part of those conversations, at least
20 at a high level. Would you agree?

21 A. Yes.

22 Q. And those conversations happened in connection with the
23 discussions with Mizuho regarding acquiring financing. Do you
24 agree?

25 A. Yes.

L4fnhil3

Stumberger - Cross

1 Q. Mr. Hild was also part of those conversations, would you
2 agree?

3 A. Possible. I don't remember who was -- who was on any one
4 of the calls. It could have been Eric, you know.

5 Q. OK.

6 A. Generally, yes.

7 Q. Generally, fair. Let me -- at a high level at least,
8 Mr. Hild was involved in those discussions. Is that fair?

9 A. That's my recollection.

10 Q. OK. And the purpose of this, at least in major part here,
11 was to make sure that IDC would price the CUSIPs that were to
12 be acquired by Live Well and would continue to price those
13 CUSIPs; is that right?

14 A. Yes.

15 Q. OK. Isn't it the case, sir, that they in fact agreed to do
16 that?

17 A. Yes.

18 Q. And is it the case that this sort of discussion took place
19 as part of this general discussion with Mizuho at that time?

20 A. Yes.

21 Q. OK. Very good. Now, as such, that allowed the financing
22 arrangement to proceed, yes?

23 A. Yes.

24 Q. All right. Not to get into the details here, but we talk
25 about this as a single transaction. It is the case more

L4fnhil3

Stumberger - Cross

1 precisely that the Stifel transaction proceeded in two stages?

2 Isn't that right, sir?

3 A. Yes.

4 Q. In other words, there was an initial purchase of part of
5 the -- a certain number of CUSIPs, and then a little bit later
6 a purchase of the rest of the CUSIPs; is that right?

7 A. Yes.

8 Q. OK. Isn't it the case, Mr. Stumberger, that after the
9 first stage of the purchase was completed, there was some
10 uncertainty about whether Live Well would be able to acquire
11 the necessary financing to acquire the remaining CUSIPs?

12 A. My recollection was it was done in two stages. I don't
13 remember -- I have no memory of problems per se with the second
14 stage, as you're saying. I don't have any recollection.

15 Q. Fair. If you don't recollect, you don't recollect.

16 Let's do it this way.

17 The idea -- well, let me ask you this. One problem
18 with this situation was that IDC at that point in time did not
19 necessarily have its own model. It didn't independently price
20 this class of security, is that right?

21 A. Yes.

22 Q. And one of the reasons for that is because, frankly, it's,
23 as you said, extremely complicated. Is that fair?

24 MR. HARTMAN: Objection. Foundation.

25 THE COURT: Overruled.

L4fnhil3

Stumberger - Cross

1 MR. DUSING: I'm sorry.

2 THE WITNESS: Could you repeat the question.

3 MR. DUSING: Sure.

4 BY MR. DUSING:

5 Q. Was it your understanding that one of the reasons that IDC
6 at that time did not model these securities was because of
7 their complexity?

8 A. I don't have recollection on the exact reason they were not
9 modeling these. It's -- I said before it's a complex bond and
10 I don't remember the exact reason why they weren't.

11 Q. OK. Very good. In any event, do I understand correctly
12 that they were not at this point in time?

13 A. That's correct.

14 Q. All right. But do I understand correctly that the
15 understanding that was reached in these discussions with Mizuho
16 with IDC, with Live Well, was that IDC would ultimately do
17 that? Is that your understanding?

18 A. Yes.

19 Q. OK. But until that time IDC would continue to accept
20 something called broker quotes from Live Well; isn't that
21 correct?

22 A. Yes.

23 Q. OK. Now, I want to try and do this the best I can. Can we
24 agree that a broker quote is basically a -- well, it's a data
25 point? It's what somebody thinks a security is worth? Is that

L4fnhil3

Stumberger - Cross

1 a fair definition?

2 A. I don't know the exact definition of broker quote. It's a
3 quote delivered by a broker to IDC.

4 Q. Well, I'm not sure -- a broker quote is a creation of IDC;
5 that's an IDC thing. Fair enough?

6 A. Yes.

7 Q. I'm not sure we need to talk -- I mean, IDC knows what that
8 is. But for our purposes IDC, as it turns out, has not only an
9 evaluated price, but it has this other thing called a broker
10 quote, is that fair?

11 A. Yes.

12 Q. And whereas an evaluated price is an independent
13 third-party assessment of what a security is worth, a broker
14 quote is not that; is that right?

15 A. Right. That is a valuation developed or created by a
16 broker delivered to IDC.

17 Q. Right. And IDC with a broker quote is not expressing --
18 they're just kind of passing along the information as opposed
19 to, you know, that's not exactly what they would say -- that's
20 what they would say it was worth. Is that fair?

21 MR. HARTMAN: Objection to the foundation for that.

22 THE COURT: Sustained.

23 MR. DUSING: I'm sorry, your Honor?

24 THE COURT: Sustained as to what they would say.

25 MR. DUSING: Fair enough.

L4fnhil3

Stumberger - Cross

1 BY MR. DUSING:

2 Q. If IDC did not value or did not issue an independent, you
3 know, an evaluation of a particular securities price, it
4 nonetheless often issued a so-called broker quote price, fair?

5 A. Yes.

6 Q. OK. And, in fact, during your time at Stifel, you would
7 often, oftentimes submit so-called broker quotes, broker quote
8 values to IDC, and IDC would publish these values; isn't that
9 right?

10 MR. HARTMAN: Objection. Foundation with respect to
11 the latter part.

12 THE COURT: If you can answer that as a general
13 matter, answer it, based on your experience. But, again, if
14 you feel like you can't answer it, say that. And let us know
15 if you want the question read back.

16 THE WITNESS: No, it's OK.

17 A. I don't have recollection of Stifel sending prices to IDC.
18 I know Stifel used repo lending during periods of time. I
19 don't remember myself sending prices. It could have been
20 someone on my team. It would have been someone in the
21 operations group, but --

22 Q. Fair enough. Let me clarify. When I say -- that's my
23 fault. I don't mean you personally. I mean your team or
24 Stifel generally was supplying broker quotes to IDC with
25 respect to those bonds, some of those bonds, is that right?

L4fnhil3

Stumberger - Cross

1 A. My recollection was when Stifel used repo financing for
2 periods of time -- my recollection was the prices on the books
3 at Stifel were used for the lending amounts. That's not
4 perfect recollection.

5 Q. OK. But I'm asking about -- here's what I'm asking. When
6 you were at Stifel, did you, any member of your team, or
7 anybody at Stifel, to your knowledge, provide values to IDC as
8 broker quotes?

9 A. I don't remember. It's possible. I don't remember.

10 Q. OK. All right. Nonetheless -- we'll come back to that.

11 It is the case, is it not, that there is generally an
12 understanding here that for a period of time Live Well would
13 provide to IDC its valuation of these bonds, its internal
14 valuation, and that IDC would use these for a period of time
15 until it built its own model and independently evaluated them?

16 A. That's correct.

17 Q. I'm sorry?

18 A. That's correct.

19 Q. OK. And so what that would look like then is this: Live
20 Well would provide its internal valuations to IDC, IDC would
21 publish its values pursuant to its subscription service, which
22 presumably would be the value supplied by Live Well Financial,
23 and the repo lender would lend to Live Well an amount based in
24 part on that value.

25 Is that a fair depiction, sir?

L4fnhil3

Stumberger - Cross

1 A. Yes.

2 Q. OK. Let me stand out of the way to make sure everybody can
3 see this. So with all of this that we are talking about, the
4 testimony of the past couple of days, when we have these
5 entities, we have Live Well, we have IDC, we have the repo
6 lender, it's this relationship that we are talking about that
7 is at the heart of it. Would you agree?

8 A. Yes.

9 Q. OK. And I just want to make sure that we understand that
10 the intent the plan, if you will, at the time of the Stifel
11 transaction -- let me step out of the way here -- was for these
12 values -- I'm going to put "BQ" here for broker quotes, really
13 just Live Well's internal valuations, for this to happen only
14 until IDC developed its own model. Do you agree, sir?

15 A. Yes.

16 Q. And the plan, the intent at the time was, once IDC
17 developed its own model, that IDC would independently evaluate
18 these securities, and those would be the values published to
19 the repo lender?

20 A. That's correct.

21 Q. OK. But that is not what happened, is it, sir?

22 A. My recollection was Live Well delivered broker quotes for a
23 period of time in 2014, even perhaps through early 2015. IDC
24 developed a model at that point.

25 Q. And we'll get there. But here's the point I want to make

L4fnhil3

Stumberger - Cross

right now. Do you agree that the original plan, the original intent of the transaction in that respect was changed?

A. It was changed from what?

Q. Let me rephrase it. Insofar as I think we've established the original plan or intent of the parties here was that Live Well would provide value, so-called broker quotes to IDC only until IDC developed its own model and thereafter not, that that changed insofar as -- cutting to the chase -- IDC was never able to develop an effective model.

Do you agree, sir?

A. I agree that it changed. There were issues, there were issues in our opinion of what was happening with the IDC valuation when they announced they were modeling the bonds.

Q. Very good. And we'll get there. I just want to make sure that we understand.

So let's do it this way. So, having talked about the original plan, the original intent, after the transaction, things proceeded accordingly for a period of time. Would you agree?

A. Yes.

Q. Meaning that, following the transaction in say September of 2014 through the end of 2014, and we'll get to a timeline in a second, as everybody had agreed, Live Well gave its internal valuations as broker quotes to IDC, IDC published those values, and the repo lenders or lender lent against those values. Do

L4fnhil3

Stumberger - Cross

1 you agree, sir?

2 A. Yes, generally. And I say that because there were blips of
3 time during that time period, there were -- my recollection is
4 ITC was making certain adjustments to the prices, but that's
5 the general -- that's generally what happened.

6 Q. Fair enough. And I am trying to cover this generally in
7 the interest of time.

8 A. OK. I got to be --

9 Q. Understood. That's fair. So let -- can I just do it this
10 way. Everything I just said generally --

11 A. Yes.

12 Q. -- would you agree?

13 A. Yes.

14 Q. OK. But you make a good point I think. IDC didn't
15 necessarily accept precisely the value that was given to it by
16 Live Well, correct?

17 A. That's my recollection.

18 Q. Yeah. Just to be clear, IDC had nothing to do -- well, let
19 me rephrase that. IDC was a separate standalone entity, yes?

20 A. Yes.

21 Q. Live Well Financial could not control what value was
22 published by IDC. Do you agree?

23 A. That's correct.

24 Q. In fact, at no point in time could Live Well Financial
25 dictate what price was published by IDC. Do you agree, sir?

L4fnhil3

Stumberger - Cross

1 A. Yes. Live Well could not dictate what IDC has to do.

2 Q. Well, it could not, right?

3 A. Right.

4 Q. After all, the entire purpose of this, sir, is it not --

5 MR. HARTMAN: Objection. Argumentative.

6 THE COURT: The objection is to?

7 MR. HARTMAN: Argument.

8 MR. DUSING: I can rephrase, your Honor.

9 THE COURT: All right. Why don't you do that.

10 MR. DUSING: Sure.

11 BY MR. DUSING:

12 Q. The entire purpose of IDC's existence is to be an
13 independent valuation service, isn't that correct, sir?

14 A. Yes.

15 Q. OK. So thank you for the clarification. Generally, the
16 values were used for a period of time. There was some
17 deviation. At some point in time -- and why don't we do this.
18 I would like to do a little timeline here, so if I can erase
19 this portion. Can I do that, Mr. Stumberger?

20 A. Sure.

21 Q. Very good. Before we do that, before we do that, one final
22 thing. Just to make sure we understand what's going on here,
23 these lenders generally, you referred to this thing called a
24 haircut, right?

25 A. Yes.

L4fnhil3

Stumberger - Cross

1 Q. And again, can I -- in the interest of time, is this
2 roughly comparable to sort of how a home loan works? You know,
3 you have to put 20 percent down; the haircut's like the down
4 payment kind of thing?

5 A. Yes. It's the amount between the purchase price and the
6 amount of lending you could receive from a lender.

7 Q. OK. In other words, these lenders weren't going lend the
8 full amount of the purchase price for the bonds. Live Well
9 would have to, you know, put a down payment down, if you will?

10 A. Correct.

11 Q. OK. And the amount of the down payment varied by lender.
12 Do I understand correctly?

13 A. Yes.

14 Q. In other words, the haircuts were different for different
15 lenders?

16 A. Yes.

17 Q. Fair enough. OK. So, you know, the higher the value
18 published by IDC, whatever the haircut was for a particular
19 lender, the more money could be borrowed by Live Well. Do you
20 agree, sir?

21 A. All else being equal, two prices that -- in the same
22 notional amount or face amount, the higher the price means more
23 borrowing.

24 Q. OK. Let me --

25 A. Can I clarify that?

L4fnhil3

Stumberger - Cross

1 Q. I am not trying to be complicated here.

2 The understanding between Live Well and the repo
3 lenders the arrangement, the contractual arrangement is that
4 the repo lender's going to lend to Live Well based on the value
5 of the bonds which are collateral, fair?

6 A. Yes.

7 Q. OK. But the value of that bond collateral is determined,
8 at least with respect to repo lenders that use IDC, by what IDC
9 publishes as its price, yes?

10 A. Yes.

11 Q. So, the higher the value of the price or value published by
12 IDC, the more money necessarily that Live Well can borrow,
13 right?

14 A. Yes.

15 Q. OK. With that, I'll take it.

16 Now, Mr. Stumberger, at the time of the Stifel
17 transaction, you had no intention of defrauding anybody. Would
18 you agree?

19 A. I agree.

20 Q. I'm sorry, sir?

21 A. Yes, yes, I agree.

22 Q. OK. And based on your interactions and conversations with
23 the others involved in this transaction, it was not your
24 perception that Mr. Hild had any intent to defraud anybody.
25 Would you agree?

L4fnhil3

Stumberger - Cross

1 MR. HARTMAN: Objection to --

2 THE COURT: Sustained.

3 MR. DUSING: I will move on, your Honor.

4 BY MR. DUSING:

5 Q. All right. The Stifel transaction, if we use September 1
6 as date generally, Mr. Stumberger, are you comfortable with
7 that?

8 A. Sure.

9 Q. OK. So September 2014?

10 A. Yes.

11 Q. All right. We have the Stifel transaction. All right. At
12 that point in time there's sort of this temporary understanding
13 that we just discussed worked out, namely, that for a period of
14 time Live Well would supply its internal valuations of the
15 bonds to IDC, IDC would use those, although it didn't have to,
16 and, as you said, didn't always use them precisely, and the
17 lender, Mizuho, would lend based off of those values; is that
18 correct?

19 A. Yes.

20 Q. OK. But, as we talked about, that understanding was sort
21 of a temporary understanding, and the idea was that at some
22 point IDC would develop its own independent valuation. Fair?

23 A. Yes.

24 Q. OK. And, in fact, there came a point in time when IDC
25 endeavored to do that. Isn't that the case, sir?

L4fnhil3

Stumberger - Cross

1 A. Yes.

2 Q. And, kind of cutting to the chase here, can we agree that
3 the results of that were -- went quite poorly?

4 MR. HARTMAN: Objection. Vague.

5 MR. DUSING: I can rephrase, your Honor.

6 THE COURT: OK.

7 BY MR. DUSING:

8 Q. We can we agree, Mr. Stumberger, that there were some
9 problems with the IDC independent valuations with its model, if
10 you will?

11 A. Yes.

12 Q. And I believe you testified about this a little bit in your
13 testimony yesterday on direct. This is what you were referring
14 to? Yes, sir?

15 A. Yes.

16 Q. OK. And there is when -- and don't let me put words in
17 your mouth here. I am just trying to characterize things in
18 the interest of time. Sort of, you know, you had to get
19 involved with IDC and say, Hey, what are we doing here.
20 There's problems. Is that fair?

21 A. Yes.

22 Q. And the purpose of that was to, can we agree, to solve the
23 problem of their model which they had, they had built. Yes?

24 A. Yes.

25 Q. OK. Let's understand the problem with their model. Well,

L4fnhil3

Stumberger - Cross

1 can we agree there were multiple problems with the value
2 generated by their model?

3 A. My recollection, there were two separate issues.

4 Q. OK. What are the -- can you remind us of the two that you
5 recall?

6 A. My recollection was there was an inability to match a Live
7 Well valuation and an IDC valuation. It's a tie-out process,
8 trying to model one bond to come up with the same answer. My
9 recollection is that was -- it was -- it couldn't be done.

10 That's one.

11 Number two, I remember the daily degradation of bond
12 value as they were modeling the portfolio and that was the
13 other issue. So, two issues.

14 Q. OK. So you mentioned the daily degradation. We should
15 clarify I think. IDC was issuing daily values at this time.
16 Do you agree?

17 A. That's my recollection.

18 Q. OK. And wasn't one of the issues that the volatility of
19 the values being generated by the IDC model were all over the
20 place and otherwise one day real high, one day very low?
21 Wasn't the volatility here a big issue as well?

22 A. My recollection was there was a -- a daily amount the bond
23 portfolio was dropping, the valuation was dropping. I don't
24 recollect -- I have no recollection of it spiking up, spiking
25 down in that manner. I remember just a kind of a steady amount

L4fnhil3

Stumberger - Cross

1 each day it was going down.

2 Q. OK. And we can maybe look at some documents later on that
3 can help for this period. But, in any event, am I correct in
4 understanding that you agree that there were, you know, serious
5 analytical deficiencies in the IDC model?

6 A. Yes.

7 Q. And because -- let me withdraw that. Did you have
8 face-to-face meetings with IDC about fixing their model?

9 A. I recall having a meeting face to face with IDC. I don't
10 remember when. And it wasn't about these deficiencies. We had
11 discussions over the phone and e-mail.

12 Q. OK. So I'm speaking now just about the problems, the
13 deficiencies with the IDC model. Can we agree that you
14 communicated with them through whatever form or fashion?

15 A. Yes.

16 Q. It sounds like one of those ways was not in person, but
17 there were calls and e-mails if I understand correctly; is that
18 right?

19 A. Correct.

20 Q. Is it fair to characterize the communication about this
21 issue as sort of, you know, it wasn't once or twice; it was
22 kind of an ongoing discussion for a period of time? Is that
23 fair?

24 A. That's fair, yeah.

25 Q. OK. And can we agree as well that there were other members

L4fnhil3

Stumberger - Cross

1 of your team that were involved in these discussions with IDC?

2 A. Correct.

3 Q. And can we agree that one of those people was Dan Foster?

4 A. Yes.

5 Q. OK. And can we agree that one of those people was Ernie
6 Calabrese?

7 A. Yes.

8 Q. OK. And can we agree that one of those people was Eric
9 Rohr?

10 A. Yes.

11 Q. OK. And just to be clear, Eric Rohr was not a member of
12 your team historically? He was the CFO and chief compliance
13 officer of Live Well Financial; is that right?

14 A. My recollection he was the chief financial officer. I
15 didn't know about compliance officer.

16 Q. OK. So you understood -- you knew him to be the CFO?

17 A. That's correct.

18 Q. The chief financial officer?

19 A. Yes.

20 Q. OK. All right. And just to give us an idea of physical
21 proximity, your offices, sir, and those of your team were here
22 in New York City; isn't that right, sir?

23 A. There was an office in New Jersey and an office in
24 Manhattan.

25 Q. Very good. So, in the interest of brevity, putting New

L4fnhil3

Stumberger - Cross

1 York and New Jersey together, they were up here in that way,
2 yes?

3 A. Yes.

4 Q. OK. And Mr. Rohr and Mr. Hild were physically located on a
5 day-to-day basis down in Richmond, Virginia, where Live Well
6 was headquartered, if you will. Yes, sir?

7 A. Yes.

8 Q. OK. Nonetheless, would you agree that you had, well, far
9 more frequent interaction with Mr. Rohr on a day-to-day basis
10 managing the portfolio than you did Mr. Hild?

11 A. On a day-to-day basis there was a standing call at 9:30
12 where my members of my team and Eric and Michael were on, so
13 that was the routine call.

14 I wouldn't know how to quantify the amount of
15 discussions with Michael or Eric. Like, I -- that was the
16 question? Did I work with Eric more than Michael?

17 Q. No. The question was simply on the whole over time you had
18 more interaction with Mr. Rohr than you did with Mr. Hild. Do
19 you agree with that premise?

20 A. On the bond -- on everything or just the bond portfolio?

21 Q. Just in general.

22 A. I would say that's accurate.

23 Q. In addition. We saw something in these e-mails called a
24 HECM trading Listserv. Do you recall that, sir?

25 A. The e-mail address?

L4fnhil3

Stumberger - Cross

1 Q. Yes, sir.

2 A. Yes.

3 Q. I should have put that up on there on the list of terms,
4 and that's my bad. But, sir, it is the case that the
5 recipients or the group members, if you will, of that HECM
6 trading Listserv included you and your team and Eric Rohr, but
7 not Mr. Hild?

8 A. That's correct.

9 Q. OK. Very good. So, unless Mr. Hild was specifically
10 separately copied, for example, on an e-mail that went to the
11 HECM trading Listserv, he would not then see that e-mail. Do
12 you agree, sir?

13 A. Yes.

14 Q. OK. All right. OK. So, getting back to our timeline
15 here, I think we've established that from say the Stifel
16 transaction, September 2014, through some period of time -- can
17 we use January of 2015 as when generally IDC tried to model
18 this themselves?

19 A. Yes.

20 (Continued on next page)

21

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23

24

25

L4FTHIL4

Stumberger - Cross

1 BY MR. DUSING:

2 Q. I want to be fair.

3 A. Yes.

4 Q. So 2015, January, if I say IDC attempts to model, and this
5 is kind of when those problems that you referenced arose. Is
6 that fair, Mr. Stumberger?

7 A. Yes.

8 Q. At this point in time would you agree with me that the
9 parties' intention with respect to the Stifel transactions,
10 namely the repo lenders Mizuho, IDC and Live Well, all of that
11 changes at this point, do you agree, sir?

12 MR. HARTMAN: Objection, foundation, with respect to
13 another entity.

14 MR. DUSING: I think we covered that, your Honor.

15 THE COURT: I'll allow it.

16 Q. Mr. Stumberger?

17 A. Could you repeat?

18 Q. It's at this point in time that everything changes. Do you
19 agree?

20 A. In January 2015?

21 Q. Yes.

22 A. Yeah, that was what we were waiting for, for the IDC
23 developer model and be able to price, and that was the moment
24 from the beginning we were waiting for.

25 Q. And if IDC -- the idea was IDC would have a model, it would

L4FTHIL4

Stumberger - Cross

1 work, they would price it, and that would be the end of Live
2 Well providing its internal values to IDC. Agreed?

3 A. Yes.

4 Q. There would be no purpose in that anymore, do you agree?

5 A. Yes.

6 Q. But IDC couldn't model this stuff, right?

7 Let me rephrase that. The problem is that IDC could
8 not develop a model that worked, that didn't have problems. Do
9 you agree, sir?

10 A. That was our opinion, yes.

11 Q. Ultimately did IDC agree, to your understanding?

12 A. Ultimately IDC requested that Live Well restart delivering
13 broker quotes.

14 Q. To clarify, Mr. Stumberger, IDC said generally -- well, let
15 me rephrase that.

16 In response to the issues about the problems with
17 IDC's model in connection with these conversations which you've
18 testified about, do I understand correctly that the outcome of
19 them was that IDC requested that the broker quotes continue?

20 A. Yes.

21 Q. And did they in fact continue?

22 A. Yes.

23 Q. And did they in fact continue, as it turned out -- we have
24 got more to talk about -- from that point in time all the way
25 through to the very end?

L4FTHIL4

Stumberger - Cross

1 A. Yes.

2 Q. And jumping to the end, isn't it the case that in or about
3 April of 2019, IDC announced that they just weren't going to --

4 MR. HARTMAN: Objection.

5 THE COURT: Sustained.

6 MR. DUSING: I withdraw the question, your Honor, at
7 this point in time.

8 Q. So that being the case, Mr. Stumberger, do you agree that
9 it was still -- that IDC still -- the understanding was that
10 IDC was going to fix its model, at some point it still would
11 independently evaluate these securities. Do you agree, sir?

12 MR. HARTMAN: Objection to whose understanding.

13 THE COURT: Let's focus on your understanding.

14 MR. DUSING: If I could rephrase.

15 THE COURT: Go ahead.

16 Q. All the questions I'm about to ask are strictly based on
17 your understanding based on your involvement with the
18 conversations with the IDC personnel arising from the problems
19 with IDC's model. Was it your understanding they were going to
20 try to fix these?

21 A. My understanding was after the conversation in early
22 February where IDC requested Live Well commence sending broker
23 quotes again, I remember it being if Live Well wanted IDC to
24 begin the process again, they would be notified. That's what
25 the email says.

L4FTHIL4

Stumberger - Cross

1 Q. Well, we'll look at the emails later, but let me make sure
2 I understand your understanding. Your understanding is that --
3 first of all, are we clear that IDC requested that the broker
4 quotes continue. This much we have correct?

5 A. Yes.

6 Q. And do I understand correctly that it was your
7 understanding that if Live Well wanted that to change, that
8 Live Well would let IDC know and IDC would try and come up with
9 a better model?

10 A. That's my recollection.

11 Q. Okay. In any event, notwithstanding whatever your
12 recollection, there was nothing that would have prevented IDC
13 from pricing it however they wanted to price this at any point
14 in time. Do you agree, sir?

15 A. Sir, could you repeat that?

16 Q. Yes. IDC could price this stuff however it wanted at any
17 pint in time. Do you agree, sir?

18 A. Yes.

19 Q. It could have decided not to price this at all, in other
20 words, not to use broker quotes at any point in time. Do you
21 agree, sir?

22 A. Yes.

23 THE COURT: Let us know when it would be a good time
24 to break for lunch. I don't want to cut you off, but when it's
25 any natural time.

L4FTHIL4

Stumberger - Cross

1 MR. DUSING: Your timing is perfect, your Honor, this
2 would be a good time.

3 THE COURT: We're going to take lunch. Please
4 remember don't discuss the case, keep an open mind and have a
5 nice lunch.

6 (Jury not present)

7 THE COURT: Why don't we take 40 minutes. Do you need
8 to talk to me about anything?

9 I'll see you in 40 minutes.

10 (Luncheon recess taken)

11 (Continued on next page)

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L4FTHIL4

Stumberger - Cross

1 AFTERNOON SESSION

2 (2:10 p.m.)

3 (Jury present)

4 THE COURT: You may proceed.

5 MR. DUSING: Thank you, your Honor.

6 BY MR. DUSING:

7 Q. Mr. Stumberger, can you hear me, sir?

8 A. Yes.

9 Q. I would like to continue where we left off before the lunch
10 break. Just to remind you, we talked about kind of how the
11 plan changed and the broker quotes continued forward. I would
12 like to begin talking about the period that happened
13 thereafter. Is that okay, sir?

14 A. Yes.

15 Q. Now it is the case, is it not, that, in connection with the
16 problems that arose from IDC's model, that there was internal
17 discussion involving Mr. Hild regarding those issues, isn't
18 that right?

19 A. Yes.

20 Q. And I don't want to cover ground we have gone over
21 previously, but you testified a little bit about that yesterday
22 and this morning, is that fair?

23 A. Yes.

24 Q. And isn't it the case that in connection with those
25 conversations, a bigger conversation grew out of that that

L4FTHIL4

Stumberger - Cross

1 involved sort of you and Mr. Hild and others over time
2 reassessing how to value, on a held-to-maturity basis anyway,
3 these bonds?

4 A. And the question is did I have discussions over time?

5 Q. Yeah, I guess my question is it's my understanding in
6 connection with the IDC model problem there were discussions.
7 My question now is out of that, it is the case, is it not, that
8 kind of a larger conversation developed internally about how to
9 best value these bonds?

10 A. My recollection was the dominant discussion related to that
11 happened in September 2015.

12 Q. Understood. And we'll get there. I'm trying to take it
13 step by step. But let's do that. I believe you testified that
14 in September of 2015 there was a decision made to implement a,
15 fair to say, a different valuation methodology internally at
16 Live Well, is that right?

17 A. Yes.

18 Q. Can I go ahead and draw that box on the timeline here?

19 A. Sure.

20 Q. Is that generally, from your perspective, kind of the next
21 event?

22 A. My recollection is yes, that was the event.

23 Q. So I am just going to -- I know this isn't perfect here,
24 but I will put -- we agree that's in September of 2015, sir?

25 A. Yes.

L4FTHIL4

Stumberger - Cross

1 Q. And I will say SC14 implementation IMP. Do you think
2 that's fair?

3 A. Sure.

4 Q. And kind of what makes that a milestone sort of event is
5 that that's when the scenario 14 was sort of adopted
6 internally, if you will, is that right?

7 A. Yes.

8 Q. But scenario 14, though, wasn't created in September of
9 2015, correct?

10 Let me ask it a different way. I will withdraw that
11 question.

12 While we marked the implementation of scenario 14
13 internally in September of 2015, it was many months in the
14 making, so to speak, the development of it, is that correct?

15 A. My recollection is the major component of scenario 14 was
16 the yield adjustment. My recollection is that happened in
17 September 2015.

18 Q. I want to make sure we're connecting here. I think we are
19 clear that the actual implementation of it was in
20 September 2015. What I'm asking about now is that whatever was
21 implemented was the product of quite a few internal discussions
22 that had occurred over the months prior to September of 2015.
23 Do you agree, sir?

24 A. I don't have recollection of having these discussions the
25 months prior. There were adjustments and scenarios being run

L4FTHIL4

Stumberger - Cross

1 months prior, but the major change in scenario 14 was the yield
2 assumption, and my recollection is that happened at that time.

3 Q. Understood. I will move on. Let me do it this way: After
4 the Stifel purchase, going back to September 2014, over time at
5 whatever time, it is the case, is it not, that there was --
6 there developed internal discussions between, among others,
7 Mr. Hild and yourself and your team about the best way to value
8 these bonds?

9 A. In the time period again?

10 Q. From the time of the Stifel transaction until up to and
11 including September of 2015, there was discussions about how to
12 value these bonds, yes?

13 A. My recollection was the bonds were being marked using
14 market contextual assumptions up until the point of the IDC
15 issues of early 2015. And then after that there were still
16 that context of using market contextual assumptions and inputs,
17 there were scenarios run in the months between February and
18 September, but the major change, in my opinion, was at that
19 time.

20 Q. Understood. There's no dispute there again, but the events
21 that gave rise to that change happened over a period of time
22 prior?

23 MR. HARTMAN: Objection, asked and answered.

24 THE COURT: Overruled.

25 A. Repeat that?

L4FTHIL4

Stumberger - Cross

1 Q. Let me try it a different way.

2 Some of these phone calls that we have listened to,
3 these recorded calls that we listened to on your direct, these
4 are part of much larger conversations wherein there's a lot of
5 things discussed, one of which is how to best value these
6 bonds. Do you agree?

7 A. My opinion -- and you could play calls if you want -- my
8 recollection is the change in the valuation happened, the major
9 one happened during that time period in September. There were
10 perhaps discussions about -- I would have a recollection of
11 being best way to value, if there were market gyrations where
12 the market was changing and speeds were slowing, making
13 adjustments to the assumptions would be a better way to value
14 these during that time.

15 Q. So again you made reference to market. So let me ask you
16 this: Isn't it the case that the investment thesis or the plan
17 once you were at Live Well was to hold these bonds to maturity?

18 A. Yes.

19 Q. Can we agree that that is the opposite of trading them?

20 A. Yes.

21 Q. Can we further agree that the way that you had modeled them
22 in the past or valued them this the past, for example, when you
23 were at Stifel, was a way that contemplated future trade?

24 A. Yes.

25 Q. Would you agree then that this -- I think at Live Well, as

L4FTHIL4

Stumberger - Cross

1 you said now on the buy side, in valuing them for purpose
2 holding it for a maturity situation, that required a new way of
3 valuing these potentially, do you agree?

4 A. I agree. My answer is depending on the financing of the
5 portfolio.

6 Q. Well, I'm not asking in relation to the financing, I'm just
7 asking generally. If in the past you valued them in a way that
8 contemplated they would be sold at one point, that was the
9 past. Now you're looking at them with an eye towards holding
10 them to maturity, it was the case, was it not, we might need to
11 revisit how to value these. Is that fair, sir?

12 A. Discussions related to the valuation, my recollection, were
13 that month's -- the result of month end valuation. You're
14 using repo financing, and that if it was buy and hold and you
15 had your own internal financing, that's one thing, but the
16 break is the fact that the repo lenders, they needed something
17 where they could trade, so the value on what they had to do,
18 potentially.

19 Q. And we'll talk about that at some point in time, I promise,
20 but I'm not talking about it now. Now I'm talking about the
21 fact that it is the case, is it not, that once you were at Live
22 Well, as you said the idea was these were going to be held to
23 maturity, there were discussions internally between your team,
24 Mr. Hild, Mr. Rohr, about how to value the bonds?

25 A. There were discussions, yeah.

L4FTHIL4

Stumberger - Cross

1 Q. After all, if the plan is to hold these things forever,
2 would you agree it's fairly important to understand how much
3 they're valued, fair?

4 A. Yes.

5 Q. And this became -- these discussions became fairly regular
6 and intense over the course of 2015. Do you agree, sir?

7 A. Yes.

8 Q. And they also increased in frequency over the course of
9 2015. Do you agree, sir?

10 A. My recollection is the frequency increased substantially
11 late summer, July, August, into September.

12 Q. Fair enough. In other words, right before the period where
13 scenario 14 was implemented in September, is that right, sir?

14 A. Yes.

15 Q. Because one of the reasons that the frequency increased
16 during that time was because isn't it the case that
17 collectively you guys felt like you saw that these bonds were
18 worth way more than the trading way of valuing them accounted
19 for, isn't that the case, sir?

20 A. My recollection is there were discussions around the
21 intrinsic value of these bonds versus where they were trading
22 in the market.

23 Q. And my question, though, is actually collectively, at some
24 point beginning with whenever these conversations began up
25 through prior to or including September of 2015, there was an

L4FTHIL4

Stumberger - Cross

1 understanding, was there not, that these bonds were worth more
2 than people thought, there was hidden value, yes, sir?

3 A. Yes, that's what I'm describing as the intrinsic value.

4 Q. I want to make sure we're defining terms. You used the
5 term "intrinsic value," correct?

6 A. Yes.

7 Q. Forgive me, I'm not a bond trader. Moving forward we'll
8 use that term. How would you define that term?

9 A. I would define it as an asset or these bonds' true value.
10 It's an opinion, everyone would have a different one, but a
11 true value of the asset versus where it trades in the market
12 depending on other factors, supply and demand. It's a true
13 value of the asset.

14 Q. The intrinsic value?

15 A. Yes.

16 Q. The reason why that's such an important thing is the plan
17 at this point is not to trade them but to hold them forever,
18 right?

19 A. Yes.

20 Q. So a discussion of their true value ensues over time, and
21 step by step is it fair to say it was perceived that there was
22 more true value about these bonds than had otherwise been
23 thought, than had previously been thought, is that true, sir?

24 A. It's personally something I have always known. I don't
25 know when those discussions started in earnest, but there were

L4FTHIL4

Stumberger - Cross

1 discussions around that.

2 Q. Independent of whether you had always felt this way, as a
3 group, you, Mr. Hild, Mr. Rohr, the other members of your
4 team -- first of all, could we be clear these discussions
5 happened between all of those people, is that right?

6 A. That's correct.

7 Q. In fact, we heard these recorded calls. Do I understand
8 correctly that these are dial-in conference calls, is that
9 right?

10 A. That's correct.

11 Q. And these would happen on kind of a regular basis, correct?

12 A. Yes.

13 Q. So independent of your personal view about whether people
14 were discovering the obvious, so to speak, would you agree that
15 by September of 2015, as a group, there was consensus that
16 these things were worth more than what people thought
17 intrinsically?

18 A. Yes.

19 Q. And the way that that was ascertained was over a period --
20 or the period from going back to whenever these conversations
21 began up through to include September of 2015, there were
22 discussions about how to more correctly project both the life
23 of these bonds and the amount of revenue generated over that
24 life. Do you agree, sir?

25 A. My recollection during that time was related to how the

L4FTHIL4

Stumberger - Cross

1 bonds were seasoning, how yield discussions related to that and
2 how the bonds were modeled with those two main discussion
3 points.

4 Q. While those may have been -- we'll talk about those two
5 main discussion points. First, do you agree there were
6 discussions about those two main discussion points?

7 A. Yes.

8 Q. Do you agree that as an outgrowth or the outcome of those
9 discussions was those variables in the model, those
10 projections, were tweaked? Do you agree, sir?

11 A. My recollection was there was a new yield approach at that
12 time, yield input.

13 Q. Is that a yes?

14 A. Yes.

15 Q. Okay.

16 A. Sorry.

17 Q. In addition to those two -- what was the other one, yield
18 and what else?

19 A. The assumptions to my recollection during that time were
20 related to yield and how yield would be calculated.
Additionally, there was prepayment speed approach.

22 Q. So just remind us, let me try and do this quickly, if you
23 agree with this. When it comes to prepayment speeds, slow is
24 good and fast is bad, is that fair?

25 A. For the valuation.

L4FTHIL4

Stumberger - Cross

1 Q. Sorry?

2 A. For the valuation, yes, the prices.

3 Q. Did I get it right?

4 A. Yes.

5 Q. In other words, just to say it again, a bond is going to be
6 worth more, meaning it's going to generate more revenue over
7 time if the prepayment speed is slower, yes?

8 A. For these bonds, yes.

9 Q. Sorry?

10 A. For these bonds, yes.

11 Q. So until I say otherwise, you can assume that we're going
12 to be talking about the bonds in question here and no other
13 bonds.

14 A. Yes.

15 Q. One more time. Well, do you recall my -- with respect to
16 those bonds, prepayment speeds, if slower, one could expect
17 more revenue over time, yes or no?

18 A. Yes.

19 Q. And the flip side of that coin, if faster over time, one
20 could expect less revenue over time?

21 A. Yes.

22 Q. At some point in time during this period did Live Well,
23 your group there, run different scenarios that hypothesized
24 different prepayment speeds and/or different yield curves?

25 A. Yes.

L4FTHIL4

Stumberger - Cross

1 Q. Okay. Now we have heard about something called scenario
2 14. I think you testified about that are previously. Right?

3 A. Yes.

4 Q. Can I safely assume that since it's scenario 14 that there
5 were 13 other scenarios at least that were considered?

6 A. Yes.

7 Q. In that way, would you agree that part of these discussions
8 was trying to look at some of these assumptions more closely to
9 more accurately predict how much revenue would be generated by
10 the bonds, and more accurately for how long, as part of a way
11 to better understand their true value?

12 A. I don't have perfect recollection of the different -- all
13 the 13 or 14 scenarios and the assumptions used in those.

14 There were varying prepayment speeds, yield assumptions that
15 created ultimate valuations. Every scenario had a different
16 valuation. I don't remember discussions related to what would
17 this do the average life, the maturity, to my recollection.

18 Q. So your recollection is about what would it do to the value
19 of the bond?

20 A. Yeah.

21 Q. If I understand correctly, that's the ultimate sort of
22 inquiry, but the value of the bond is a function of the various
23 variable inputs, assumptions that go into the model, correct?

24 A. Yes.

25 Q. So changing these inputs would, in the end, change the

L4FTHIL4

Stumberger - Cross

1 value of the bond so projected, fair?

2 A. Yes.

3 Q. Now when you were at Stifel, you used some kind of model,
4 is that right?

5 A. Yes.

6 Q. And after the Stifel purchase, you brought that model to
7 Live Well, so to speak, is that right?

8 A. Live Well licensed the same software as Stifel did. It's
9 call Intex.

10 Q. Fair enough. I don't mean to suggest you did anything
11 improperly.

12 Let me put it this way: You used the same model after
13 the Stifel transaction once you were at Live Well as you did
14 when you at Stifel?

15 A. Yes.

16 Q. That model had certain assumptions kind of built into it,
17 yes?

18 A. The model doesn't have assumptions built into it, you use
19 the assumptions you want to input to run. The model is a
20 discount cash flow model so it discounts cash flows. It
21 forecasts cash flows and discounts it back and gives you a
22 price.

23 Q. It's a projection?

24 A. Yes.

25 Q. That projection is based on a whole bunch of assumptions,

L4FTHIL4

Stumberger - Cross

1 right?

2 A. Yes.

3 Q. One of those assumptions is, for example, prepayment speed?

4 A. Yes.

5 Q. There are other main assumptions that you mentioned, yes?

6 A. Yes.

7 Q. There are also other assumptions that might not be major
8 but do affect things, yes?

9 A. Yes.

10 Q. So these are the things are, they not, that were discussed
11 by the group over roughly 2015 leading up to September of 2015,
12 yes?

13 A. Yes.

14 Q. At some point in time it is the case, is it not, that it
15 was decided to use different assumptions?

16 A. Yes.

17 Q. Relative to what was being used, kind of what would be
18 brought over from Stifel, yes?

19 A. The assumptions used in valuation changed from what was
20 being done previously.

21 Q. So in other words, after the transaction you have the
22 Stifel model, you're working off of that. Over time, some of
23 the assumptions pursuant to conversations are kind of getting
24 swapped out, tweaked, fair?

25 A. Yes.

L4FTHIL4

Stumberger - Cross

1 Q. Not all at once, kind of one by one, you would have
2 discussions about this input or that input. Is that a fair
3 characterization?

4 A. Yes.

5 Q. And the outcome of those discussions over time would be
6 that those various inputs would be tweaked in some fashion,
7 yes? Often, sometimes?

8 A. Please repeat that again, sorry.

9 Q. As a consequence of discussing these various inputs over
10 time, as a group, you would sort of tweak that assumption or
11 tweak the model on a whole, yes?

12 A. That's what would be done, it wasn't -- that happened,
13 yeah.

14 Q. So that's all I'm asking. So is it fair to look at it this
15 way -- and again, I'm trying to get to the point here -- you
16 began tweaking the old model that kind of you brought over from
17 Stifel at some point in time, but at some point in time it was
18 tweaked so much it was a new model, really, is that a fair way
19 of looking at it?

20 A. No, there's three primary assumptions, and at that time,
21 September 2015, two out of the three were changed materially.

22 Q. Okay. Could we agree on this scenario 14 is a methodology
23 to value these bonds?

24 A. Generally, yes. The methodology is discounting cash flows,
25 but the inputs are scenario 14. So the valuation inputs

L4FTHIL4

Stumberger - Cross

1 changed.

2 Q. Maybe we're arguing over terms here. I want to be clear.

3 The old model, when you changed the variables that you
4 mentioned in the way that you mentioned, that's scenario 14, is
5 that fair?

6 A. Yes.

7 Q. And that generated different projections or different
8 valuations for these bonds, isn't that right?

9 A. Yes.

10 Q. And so what happened in September of 2015, getting back to
11 bigger picture, is the decision was made internally at Live
12 Well to adopt this new methodology, yes?

13 A. Yes.

14 Q. In other words, to use scenario 14 values internally, yes?

15 A. That's when it was adopted and implemented, yes.

16 Q. Now can I discern here that you didn't necessarily agree
17 with that decision?

18 A. That's correct.

19 Q. As you said, from your perspective, you had kind of known
20 this all along, this was not rocket science, you did not
21 necessarily agree with the decision to start using scenario 14
22 methodology values internally at Live Well, yes?

23 A. The fact -- so at that point in time it was a departure for
24 me. In my opinion, my thought process, it was a departure from
25 what has been done. And it was a pretty big departure from

L4FTHIL4

Stumberger - Cross

1 that.

2 Q. Well, let's talk about that for a second. First of all, it
3 was a departure, yes?

4 A. It was.

5 Q. Scenario 14 was different than -- it was a way of valuing
6 these things or generating values that was different than the
7 way you had done it in the past, yes?

8 A. Yes.

9 Q. And the way you had done it in the past when you were at
10 Stifel was kind of a sell side analysis, as you would say, a
11 market analysis, fair?

12 A. Yes.

13 Q. And the scenario 14 methodology was a buy and hold kind of
14 methodology, yes?

15 A. Yes.

16 Q. And it was in fact Live Well's intention to buy and hold
17 these bonds to maturity, yes?

18 A. Yes.

19 Q. Okay. Do I perceive correctly that your disagreement with
20 the adoption of scenario 14 internally was that you had
21 concerns about how this would implicate Live Well's lenders?

22 A. Correct.

23 Q. Could we agree that is a consideration, separate and apart
24 from a good faith analytical study of the value -- intrinsic
25 true value of these bonds?

L4FTHIL4

Stumberger - Cross

1 A. Yes.

2 Q. So this made you nervous, correct?

3 A. Yes.

4 Q. And you understood the implications, perhaps, of
5 implementing the scenario 14 methodology in September of 2015
6 on Live Well's lenders, yes?

7 A. Yes.

8 Q. Now is it your testimony that you expressed those concerns
9 at that time to Mr. Hild?

10 A. My recollection is in several of those discussions I made
11 the comment that if the lenders had to sell the bonds at those
12 prices they would take losses they wouldn't be able to. That
13 is my recollection.

14 Q. So is that a yes or a no? The question is very simple: Is
15 it your testimony at that point in time you expressed your
16 concerns to Mr. Hild?

17 A. Yes.

18 Q. Okay. Did you do so on the phone?

19 A. My recollection is it was during one of those phone calls
20 that were recorded.

21 Q. Was it during one of the phone calls that was recorded that
22 we all heard in court here?

23 A. I don't believe so.

24 Q. So it was a different recorded call that was not played in
25 court here where you expressed these concerns to Mr. Hild, just

L4FTHIL4

Stumberger - Cross

1 so we're clear?

2 A. My recollection is it was on -- I was on a phone call
3 during that time where I made the comment, like I said, repo
4 lenders not being able to sell bonds if they had to, in his
5 presence.

6 Q. We'll get to that. But the point is moving forward, so
7 just so I understand these concerns, the concern is -- tell me
8 if I'm wrong here -- that at that point in time, because the
9 plan had changed, Live Well was submitting its internal values
10 to IDC, IDC didn't have to, but was publishing those values and
11 the lender was lending against those values. The concern was
12 with that kind of construct, was it not, sir?

13 A. Yes.

14 Q. Now let me just point out, do you agree that that was sort
15 of a preliminary concern in that -- let's start with this, IDC
16 could choose to publish whatever value it wanted to, agreed?

17 A. Yes.

18 Q. I understand why you might be concerned about it, but your
19 concerns assumed what that situation would continue on. Fair?

20 A. Yes.

21 Q. If IDC decided not to publish values for these CUSIPs, that
22 would eliminate the concern, yes?

23 It might have other and ramifications --

24 A. Right.

25 Q. -- but it would eliminate the concern.

L4FTHIL4

Stumberger - Cross

1 A. Yes.

2 Q. And specifically the ramifications in the past was that
3 there would be serious financing issues in the circumstance,
4 yes?

5 A. Yes.

6 Q. Nevertheless, that's something that could have happened,
7 you agree?

8 A. Yes.

9 Q. Okay. Very well. Nonetheless, you had no issue with the
10 scenario 14 valuation as an intrinsic valuation. Do I
11 understand that correct?

12 A. Generally, yes.

13 Q. I want to make sure I understand.

14 A. I don't remember exactly was that perfectly the intrinsic
15 value or on or around that, but yes.

16 Q. I want to make sure our question and answer connected. You
17 understood scenario 14 to be a sincere good faith attempt to
18 value intrinsically the bonds?

19 MR. HARTMAN: Objection with respect to whose intent.

20 THE COURT: Sustained. You can speak to what was in
21 your head but not as to what was in someone else's unless they
22 articulated something to you.

23 Do you want to rephrase that?

24 MR. DUSING: Yes, your Honor.

25 Q. As to your particular belief, you have understood scenario

L4FTHIL4

Stumberger - Cross

1 14 to be a good faith exercise to intrinsically value the
2 bonds, yes?

3 A. Yes.

4 Q. The nature of your concerns were with the potential
5 implications that you foresaw of implementing it within Live
6 Well. Do you agree?

7 A. The issue in my mind was the facts that the lenders were
8 expecting or wanting a market value, not an intrinsic value.
9 That was the issue.

10 Q. I didn't -- we'll talk about that when we -- we'll talk
11 about that later, what the expectations of the lenders were.
12 Now that you brought it up, let me ask you now, there were
13 contractual relationships in place between Live Well and these
14 lenders, yes?

15 A. Yes.

16 Q. You would agree with me that the expectations of lenders
17 were set forth in the contracts, yes?

18 A. Yes.

19 Q. You will agree with me those contracts defined, actually
20 defined market price, do you agree?

21 MR. HARTMAN: Your Honor, could we have a sidebar on
22 this really quickly?

23 THE COURT: Sure.

24 Again, if you all want to stand and stretch, you can.

L4FTHIL4

Stumberger - Cross

1 (At sidebar)

2 MR. HARTMAN: The reason I asked for a sidebar is I
3 want to be sure we're on the same page. I got a sense to the
4 question there was teeing up to suggestion or implication that
5 the lenders should have negotiated around this issue or dealt
6 with this issue, and given there was an in limine ruling on
7 this, I wanted to get a sense for the relevance.

8 MR. DUSING: If I could speak to that, your Honor.

9 THE COURT: Yes.

10 MR. DUSING: I do not intend to go through that in any
11 way at all. I wanted to introduce this. I wanted to make it
12 clear, as you know, there are contractual agreements between
13 the three victim lenders and Live Well, you marked it as an
14 exhibit, we marked them as an exhibit, we will talk about
15 those, but given the witness's answer, that's as far as --

16 THE COURT: I didn't hear the last thing you said.

17 MR. DUSING: The point was simply to establish that
18 there were definitions in the contracts between the alleged
19 victim lenders and Live Well of market value.

20 MR. HARTMAN: Okay.

21 MR. DUSING: Since the witness preemptively spoke to
22 lenders' expectations, that was the purpose.

23 I'm finished asking questions about it.

24 MR. HARTMAN: Okay.

25 THE COURT: Okay, thank you.

L4FTHIL4

Stumberger - Cross

1 (In open court)

2 BY MR. DUSING:

3 Q. I was asking if there were contractual arrangements between
4 the lenders and Live Well that governed the terms of the loans,
5 the repurchase transactions, yes?

6 A. Yes.

7 Q. And I believe you testified yesterday that you had some
8 familiarity with those, is that right?

9 A. Yes.

10 Q. So when these -- when scenario 14 was adopted in
11 September 2015, the scenario 14 values were -- it valued these
12 bonds higher than the old model, the model that you used when
13 you came over from Stifel, yes?

14 A. The valuations were higher because the inputs were
15 different.

16 Q. Well, the inputs were different because they were for two
17 separate purposes, really, right?

18 A. Yes.

19 Q. But whyever that is or however that is, my question simply
20 is the values were higher. Do you agree?

21 A. Yes.

22 Q. Now consistent with our diagram before, that little
23 triangle we draw, the implications of the internal adoption of
24 that, at least at that point in time, are significant, you
25 would agree?

L4FTHIL4

Stumberger - Cross

1 A. Yes.

2 Q. Specifically, one implication is that the values, since
3 Live Well is giving its internal valuations to IDC and IDC is
4 publishing them to the lenders and the lenders are lending off
5 of them, the effect of that is that Live Well would be able to
6 borrow more based on those valuations, do you agree?

7 A. Yes.

8 Q. That being said, again, those broker quotes, the internal
9 valuations that were being provided to IDC, that could change
10 at any time, do you agree?

11 A. Yes.

12 Q. Nonetheless, your concern was that what if it didn't,
13 right?

14 A. Yes.

15 Q. In other words, getting to the heart of the matter, do I
16 understand correctly that the essence of your concern, having
17 the experience that you have and the background, was that in
18 effect for that moment in time, if you looked hard enough, the
19 internal value being given to IDC by Live Well was sort of
20 setting indirectly the terms of the financing arrangement, yes?

21 A. I don't understand that question.

22 Q. It was probably a bad question and I withdraw it. My
23 apologies.

24 Your concern was that at that moment in time it set up
25 the scenario where Live Well's values necessarily increased

L4FTHIL4

Stumberger - Cross

1 because of its new way of valuing the stuff would have the
2 indirect consequence of increasing the borrowing base from its
3 lenders, yes?

4 A. The increase in valuations caused the amount of the loan to
5 go up with the lenders, the debt amount.

6 Q. Understood. And that's the implication of the triangle we
7 drew previously, yes?

8 A. Right.

9 Q. But will you agree at the time of the Stifel transaction it
10 was not contemplated that this situation would be in play at
11 all. Do you agree?

12 MR. HARTMAN: Objection to relevance.

13 THE COURT: Sustained.

14 Q. Mr. Stumberger, if IDC was independently valuing the bonds
15 at this point in time, you don't have the concern that you had,
16 correct?

17 A. Yes.

18 Q. All right. But they weren't, right?

19 A. Correct.

20 Q. So now do I understand correctly, you were so concerned
21 about this that you started recording phone calls, is that
22 right?

23 THE WITNESS: I just want to clarify that last answer.

24 THE COURT: Go ahead.

25 A. The conversation, to be perfectly clear, in February 2015

L4FTHIL4

Stumberger - Cross

1 was Live Well would deliver the broker quotes to IDC, and when
2 we -- this is what I wrote in the email -- when Live Well felt
3 it was necessary for them to start or commence doing it again,
4 we would notify them.

5 So I just wanted to clarify that last answer.

6 Q. Okay. Anyway, do I have this much right: IDC asked for
7 broker quotes again in February 2015, and that's what happened
8 from that point forward?

9 A. Yes.

10 Q. Okay. Now the implication we talked about of implementing
11 scenario 14 internally indirectly with the lenders is what it
12 was, do I understand that one of the things that you did having
13 the concerns that you did was start recording phone calls?

14 A. Yes.

15 Q. And we heard some of those phone calls in the courtroom
16 here yesterday and today, do you agree?

17 A. Yes.

18 Q. More precisely, we have heard portions of those phone
19 calls, right?

20 A. Yes.

21 Q. Because some of these phone calls, to be clear, were over
22 an hour long. Do you agree?

23 A. Yes.

24 Q. And the recorded calls that we heard in the courtroom here
25 today and yesterday, we haven't even heard all of those

L4FTHIL4

Stumberger - Cross

1 portions of those calls, isn't that right?

2 A. Yes.

3 Q. Okay. And so who recorded these calls, was that you?

4 A. It was myself and Ernie and Dan.

5 Q. Okay. Your other team members?

6 A. Yeah.

7 Q. All right. And was that some kind of coordinated effort?

8 A. My recollection is I was told by Dan, I don't remember the
9 date, that he was recording them, the calls. And then Ernie
10 and I, I think, started at the same time we knew he was, we
11 did, too.

12 Q. Can we agree that you discussed your concerns with the
13 other members of your team, is that right?

14 A. Yes.

15 (Continued on next page)

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L4dnihil5

Stumberger - Cross

1 Q. OK. And whether because of your concerns or whether those
2 arose themselves, there was discussion amongst your team about
3 the financing implications of this?

4 A. Yes.

5 Q. OK. All right. You did something besides record phone
6 calls, though, didn't you, on account of these concerns?

7 A. Yes.

8 Q. What was that, sir?

9 A. My team and I met with external counsel.

10 Q. OK. I'm from Kentucky. Does that mean you went and saw a
11 lawyer privately?

12 A. Yes.

13 Q. Of course you told the company that you did that, right?

14 A. No.

15 Q. Of course you told Mr. Hild that you did that, right?

16 A. No.

17 Q. Let me just try to understand this. You have these
18 concerns. You go and see a private lawyer. Let me ask you
19 this. Did you go by yourself?

20 A. No.

21 Q. Who did you go with?

22 A. Ernie and Dan.

23 Q. Let me make sure I understand this. You go with your other
24 team members. Do I have it right?

25 A. Yes.

L4dnihil5

Stumberger - Cross

1 Q. Go and secretly meet with your own lawyer, never tell
2 your boss?

3 A. We didn't --

4 Q. That is just a yes or no. Can I get a yes or no to that.

5 A. Yes.

6 Q. OK. You were aware at the time that was in violation of
7 company policy, right?

8 A. No.

9 Q. You were not aware?

10 A. Correct.

11 Q. Are you aware of whether that violated company policy now?

12 A. I haven't read my employment agreement.

13 Q. OK.

14 A. Since --

15 Q. We'll get to that, but I guess we will just knock this out.

16 Isn't it the case that you had an employment agreement with
17 Live Well?

18 A. Yes.

19 Q. And there were certain terms and conditions and obligations
20 placed upon you by virtue of that agreement?

21 A. Yes.

22 Q. One of those was conduct yourself in compliance with all
23 state, federal, local laws and regulations, correct?

24 A. Yes.

25 Q. One of those was to report to the company any concerns that

L4dnihil5

Stumberger - Cross

1 you had that involved its business, isn't that correct?

2 A. You would have to show me. I don't remember that.

3 Q. I will do so later.

4 A. All right.

5 Q. If you don't remember now, we'll leave it at that. In any
6 event, you agree that you did not do that?

7 A. Correct.

8 Q. OK. So, in response to having these concerns, you
9 privately secretly visit a lawyer with your team members,
10 never tell the company or Mr. Hild, and you start recording
11 phone calls with Mr. Hild, the CEO of the company. That's what
12 you did?

13 A. Yes.

14 Q. OK. All right. Can I ask, how frequently, how many phone
15 calls did you have on average, just on average, with Mr. Hild
16 during an average week over this period?

17 A. The calls were typically Monday through Thursday, so four
18 times a week.

19 Q. OK. I am going to try and do some math.

20 A. Sure.

21 Q. Tell me if this works. Four times a week, all right. Can
22 we say 50 weeks a year to account for two weeks of vacation for
23 everybody? Is that fair?

24 A. Sure.

25 Q. OK. So, four times a week times 50 weeks in a year is, by

L4dnihil5

Stumberger - Cross

1 my math, 200 phone calls roughly per year. Do you agree,
2 Mr. Stumberger?

3 A. Yes.

4 Q. OK. And let's just do easy math. Let's forget about 2014,
5 since you came aboard in September; let's forget about 2019,
6 since you left in March. But let's do -- 2015, 2016, 2017,
7 2018 is four years. Do you agree, Mr. Stumberger?

8 A. Yes.

9 Q. OK. So if we had 200, on average, phone calls per year
10 times four years, can we agree that's 800 phone calls with or
11 involving Mr. Hild. Do you agree, Mr. Stumberger?

12 A. That's -- yes. That's what -- the number's right.

13 Q. Loose terms.

14 A. Yeah.

15 Q. But generally you're OK with this math?

16 A. It seems like --

17 Q. In general terms?

18 A. Yes.

19 Q. OK. Pray tell, how many phone calls did you record?

20 A. My recollection was on the order of 30 to 40. I don't know
21 how -- around there.

22 Q. OK. And do you recall the time period during which you
23 recorded the calls that you recorded, sir?

24 A. It was during that time. It was -- my recollection it
25 started in September 2015. It was -- it was during -- like the

L4dnihil5

Stumberger - Cross

1 next, I don't know, several weeks is the bulk of it.

2 Q. OK. So we'll try and weave this together here. Do you
3 agree in September of 2015, when Scenario 14 was implemented,
4 there was a significant increase in the Live Well's internal
5 valuations of its bonds?

6 A. Yes.

7 Q. As a consequence of that, because of Live Well giving those
8 values in the form of broker quotes to IDC, there was a
9 significant increase in IDC prices being published at that
10 time?

11 A. Yes.

12 Q. OK. So, for general purposes, can I call that price
13 increase No. 1?

14 A. OK.

15 Q. Well, I say that because there was another period of time
16 during which, for other reasons we'll get to it in a moment,
17 there was another increase in the prices being published, an
18 increase in Live Well's internal valuations, which impacted,
19 which translated to an increase in IDC's published prices at a
20 different point in time. Yes?

21 A. Are you describing the major events, like there was a major
22 event --

23 Q. I'm talking about the first quarter of 2017.

24 A. Yes, exactly.

25 Q. I'm just trying to get to it.

L4dnhil5

Stumberger - Cross

1 A. Yes.

2 Q. Is that fair, to call it price increase No. 2?

3 A. Yes.

4 Q. So when I say price -- we'll do, you know, Live Well values
5 increase 1 -- I can't do all this here. But that was in -- say
6 Live Well values increase 2. And that was in -- is it fair to
7 say the first quarter, Mr. Stumberger, of 2017?

8 A. Yes.

9 Q. And, again, I am just trying to be summary and quick, but I
10 don't want to be inaccurate. I believe your testimony
11 involved -- there was a series of price increases in the first
12 quarter of 2017. Is that fair?

13 A. Yes.

14 Q. For present purposes, can we group those together and call
15 those the price increase No. 2?

16 A. Sure.

17 Q. OK. All right. Can I draw that on the board? Is that,
18 from your perspective, the next significant event?

19 A. I'm sorry. Say that again.

20 Q. The second price increase, which we will talk about in a
21 moment, in the first quarter of 2017, was that sort of the next
22 thing that happened from your perspective on this timeline?

23 A. The next thing that happened?

24 Q. That was a poor question. Let me withdraw it. Can I write
25 that on the box?

L4dnhil5

Stumberger - Cross

1 A. Write what?

2 Q. Tell you what. I am going to indicate first quarter, Q1,
3 2017 price increase. Can I draw that on this timeline here,
4 and can we say that that happened over the course of January
5 through March of 2017?

6 A. Yes.

7 Q. OK. I just want to make sure this is accurate. That's
8 what I'm asking. OK?

9 A. OK.

10 Q. All right. So I am revising this. That is in February.
11 We are now in 2017, yes?

12 A. Yes.

13 Q. January, February, March. OK. Why am I talking about
14 this? Because you mentioned the time period of your recorded
15 calls. Do we agree the time period during which you recorded
16 calls was between the first price increase in September of 2015
17 and the second price increase inclusive, January, February,
18 March of 2017?

19 A. Personally recording calls?

20 Q. Yes.

21 A. I recorded calls not in 2017. 2015.

22 Q. OK. I misunderstood. Do I understand correctly, then,
23 that you -- may I just ask it this way. To the best of your
24 knowledge as you sit here today, from when till when did you
25 record phone calls?

L4dnihil5

Stumberger - Cross

1 A. My recollection is my recorded calls started on or around
2 September 2015, and it was mostly during that time period, over
3 the next several weeks. I remember there being one call when
4 the SEC investigation happened. I don't remember --

5 Q. OK.

6 A. -- other calls between them.

7 Q. All right. Fair enough. Can we agree that you stopped
8 recording calls at some time prior to the first quarter of
9 2017?

10 A. Yes.

11 Q. OK. Turning back to that number, then, of roughly 800, you
12 know, phone calls on average we might say, you recorded 30 to
13 40 phone calls total. Do I have that right?

14 A. It could be 45 -- 30 to 50.

15 Q. I understand. Ballpark-ish?

16 A. Yeah. 30 to 50 I don't know.

17 Q. You agree with that ballpark-ish math however?

18 A. Yes.

19 Q. Yes?

20 A. Yes.

21 Q. OK. All right. So, the effect of this -- the decision to
22 implement, to adopt Scenario 14 values internally at Live Well,
23 as we discussed, was to indirectly increase the amount of
24 financing that was available to it. Do you agree?

25 A. Are you saying --

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Stumberger - Cross

1 MR. HARTMAN: Objection to the characterization.

2 THE COURT: I will allow the question.

3 THE WITNESS: Repeat, please.

4 MR. DUSING: OK.

5 THE COURT: If you can try and shorten your questions
6 a little bit, that would be helpful too.

7 MR. DUSING: I will do my best, your Honor.

8 THE COURT: Thank you.

9 MR. DUSING: I will do my best.

10 BY MR. DUSING:

11 Q. OK. Let's do it this way. Mr. Stumberger, at some point
12 in time was there significant growth of the bond portfolio?

13 A. Yes.

14 Q. And I'm talking numerically here now, very specifically.
15 Live Well acquired many bonds over a certain period of time.

16 Is that fair?

17 A. Yes.

18 Q. And did that period of time coincide with the adoption of
19 Scenario 14 in September of 2015 through I guess the end of
20 2016?

21 A. Yes.

22 Q. OK. Just so that we can recall, I think we said something
23 like 15 bonds were purchased by Live Well from Stifel, is that
24 right? Ish?

25 A. Ish.

L4dnhil5

Stumberger - Cross

1 Q. The number of bonds held by Live Well in the portfolio by
2 the end of 2016 was approximately 50; is that right?

3 A. Yes.

4 Q. Let's say 50, five zero. So we went from one five to five
5 zero, right?

6 A. Yes.

7 Q. My understanding is part of that was driven by the
8 increased availability of financing, a byproduct of the
9 implementation of Scenario 14. Do I understand correctly?

10 A. Can you just explain what you mean by increased financing
11 being available?

12 Q. OK.

13 A. What do you mean by that?

14 Q. Well, so we talked about this triangle and how the -- the
15 correlation between, during this time, Live Well's internal
16 valuations, those being given in the form of broker quotes to
17 IDC, IDC relying on those broker quotes and publishing those
18 values and lenders for Live Well relying on those broker
19 quotes. Yes?

20 A. Yes.

21 Q. With that explanation, if you will, can I ask the question.
22 That had the indirect effect of expanding the availability of
23 financing during that period. Yes?

24 A. More money was being lent because of that, yes.

25 Q. OK. That's a different way of asking my question. And

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Stumberger - Cross

1 Live Well used that money to buy more bonds. Yes?

2 A. Yes.

3 Q. And that is why and how the portfolio grew from 15 bonds
4 roughly at the time of the transaction to roughly 50 by the end
5 of 2016. Yes?

6 A. Yes.

7 Q. OK. Now, your compensation was -- will you agree with me
8 that it was predominantly driven by incentive-based comp?

9 A. Yes.

10 Q. You did have a salary, do we agree?

11 A. Yes.

12 Q. But the bulk of it was a factor of performance payments,
13 yes?

14 A. It wasn't performance. It was -- my comp was based off of
15 the interest income being generated by the portfolio, less
16 expenses.

17 Q. Very good. So the expansion -- let me -- can we do it this
18 way: Fair to say that your comp and your team members' comp
19 was in large measure determined by the revenue derived from the
20 bond portfolio. Yes?

21 A. Yes.

22 Q. The more bonds in the bond portfolio, the more revenue
23 generated by the portfolio. Yes?

24 A. Yes. That's how it was originally forecast and modeled
25 when we came over from Stifel.

L4dnhil5

Stumberger - Cross

1 Q. I understand. The more revenue generated by the bond
2 portfolio, the more comp to yourself and your team members,
3 yes?

4 A. Yes.

5 Q. So, can we agree that this phenomenon or these phenomena
6 that we've discussed had the effect of benefiting you and your
7 team members, at least in terms of your compensation?

8 A. Acquiring more bonds, yes. But it didn't need to be that
9 way. We had a business modeled out --

10 Q. OK.

11 A. -- where we joined from Stifel, and that was buying bonds
12 too. So this wasn't, this wasn't something that all of a
13 sudden this was going to increase our comp. It was supposed to
14 be that way differently from the beginning.

15 Q. OK. My question is rather simple: You made a lot more
16 when Live Well had 50 bonds and 50 revenue streams than you did
17 when Live Well had 15 bonds and 15 revenue streams. Yes?

18 A. Yes. However --

19 Q. OK.

20 A. Let me -- can I answer?

21 Q. If you want to explain that answer, that's fine.

22 A. Yeah. The business model that we came over with was
23 assuming new bonds would be bought, during that time when we
24 came over, monthly using Live Well's organic mortgage
25 production securitizing it and creating IO. That was the

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Stumberger - Cross

1 business plan when we came over.

2 Q. And we agree, no one foresaw this kind of circumstance that
3 developed with, you know, the broker quote situation continuing
4 forever. Yes?

5 A. Correct.

6 Q. OK. All right. So, just while we're at it, your
7 compensation, can you give us to the best of your ability for
8 2015, all in, was what?

9 A. I don't recall. It was over --

10 Q. OK.

11 A. I don't want to say the wrong number. I don't recall.

12 Q. That's fine. More than a million?

13 A. 2015?

14 Q. Yes.

15 A. Possibly.

16 Q. OK. Well, 2016?

17 A. Yes.

18 Q. It was more than a million?

19 A. Yes.

20 Q. '17?

21 A. Yes.

22 Q. '18?

23 A. I don't recall.

24 Q. Can we agree that it increased in proportion to the
25 expansion of the portfolio?

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Stumberger - Cross

1 A. Yes.

2 Q. OK. All right. So that brings us to I think the second
3 price increase, or we'll call it that, in the first quarter of
4 2017. And we've, I think, identified that as actually a series
5 of price increases that for ease in time we're going to refer
6 to as one.

7 Can we agree to that, Mr. Stumberger?

8 A. I don't want to -- like I want to clarify that from my
9 perspective. There weren't two price increases, September
10 2015, first quarter 2017. Every time a bond was acquired, the
11 prices were increasing.

12 Q. Fair enough. Let's clarify our terms here. Live Well's
13 internal valuations of its bond portfolio increased on two
14 occasions in an outstanding way. The first is in September of
15 2015. The second is over the first quarter of 2017. Do you
16 agree?

17 A. Yes.

18 Q. OK. That's all I mean to suggest by that. OK. So let's
19 talk now about the second time that this happened. Now I
20 believe some of the recorded calls that we heard earlier today
21 were from that period. Do you agree?

22 A. Yes.

23 Q. In fact, I thought we heard one or two that were recorded
24 in March of 2017. Do you agree? Well, it is whatever it is.
25 The record is whatever it is.

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Stumberger - Cross

1 A. Yeah. Or February, yeah.

2 Q. In any event, could I just ask -- so did you decide -- how
3 did you record these calls? May I ask?

4 A. Using my iPhone.

5 Q. I'm sorry?

6 A. Using my phone.

7 Q. Could you tell me how that -- you just hit --

8 A. Record it.

9 Q. Is there an app on that or how does that work?

10 A. I had a desk phone and I put on its speaker and I used my
11 phone just to record it.

12 Q. OK. So you didn't have to decide prior to the call whether
13 you were going to record the call, is that right?

14 A. I didn't have to decide?

15 Q. Let me ask it a different way. You could start recording
16 the call midstream, is that right?

17 A. Sure.

18 Q. OK. And, in fact, for some of the recordings that you made
19 that's what happened; is that right?

20 A. I don't recall. I don't have recollection of when I
21 started or stopped every single call.

22 Q. OK. Well -- and I'm not asking that. But can we agree
23 that there were at least some instances where you didn't record
24 the call until the call was under way. Is that fair?

25 A. It's possible.

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Stumberger - Cross

1 Q. OK. And there were some instances where you stopped
2 recording prior to the call being completed, right?

3 A. It's possible.

4 Q. OK. In any event, I take it you had no standard practice
5 to, before the call began, hit record, and when the call was
6 over hit over; is that right?

7 A. I didn't have documented procedures in how I did it, no.

8 Q. OK. All right. Did you decide which parts of which calls
9 to record based on their anticipated subject matter in your
10 mind? Was that the criterion?

11 A. My recollection is it was during the time of September
12 2015, in the weeks after that, it was the -- that was the
13 subject matter as a whole, not bits and pieces of the calls. I
14 don't -- it wasn't -- I wasn't trying to figure out pieces of
15 the calls to record and not record. It was the switch to
16 Scenario 14 time period is my recollection.

17 Q. OK. But you are not saying that you recorded all of the
18 calls that occurred after that period, are you?

19 A. Not all.

20 Q. OK. So, I mean, you decided which calls to record and when
21 to record them based on some logic I would presume, yes?

22 A. My vague recollection was if there were maybe hot topics,
23 you know, topics that were very important with regards to
24 valuation and other things was the general premise.

25 Q. OK. But you can only capture those portions of those

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Stumberger - Cross

1 discussions once you understood they were happening? Once they
2 had happened and you hadn't pressed record those were not
3 recorded obviously, right?

4 A. I honestly don't remember much right now about the thought
5 process of what to record and what not to. It was during that
6 general time period.

7 Q. OK. Can we at least agree that the recorded calls, not
8 just those that were played here in court, but as a whole,
9 those that you recorded, that is certainly not the universe of
10 calls that were had about that subject matter during the
11 period? Do you agree?

12 A. Yes.

13 Q. All right. You know, while we are at it, could I ask,
14 please, how many e-mails a week would you say over this period
15 you exchanged with Mr. Hild?

16 A. During that time period?

17 Q. Yeah. Say from 2014 through 2018, sir?

18 A. I don't even -- I couldn't even guess.

19 Q. I don't want you to guess.

20 A. OK.

21 Q. But a good-faith estimate would be appreciated. More than
22 one?

23 A. More than one, yes.

24 Q. More than five?

25 A. Yes.

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Stumberger - Cross

1 Q. More than ten?

2 A. An e-mail where we were both on it, or like me to him, him
3 to me? Like I don't --

4 Q. That's fair enough. Let's say any e-mail where you're --
5 yes, we'll include copying people.

6 A. Yeah.

7 Q. OK. More than ten a week?

8 A. More than ten a week? Probably ten to 15.

9 Q. OK. Let's go with a conservative number. So let's give
10 you two weeks off for vacation again. So, we agree ten a week
11 times 50 weeks a year -- again, understanding generally
12 ballpark-ish -- 500 e-mails to and from you and Mr. Hild
13 defined as you just did, would you agree with that,
14 ballpark-ish?

15 A. Some e-mails had like a long chain, so I don't know how
16 that --

17 Q. Well, let's --

18 A. It's tough to like -- it's like back and forth back and
19 forth and then it stops.

20 Q. OK. Including every e-mail. I'm just trying to get a
21 rough sense here of 10 sort of -- 10 e-mails to or from you or
22 Mr. Hild or e-mails to or from you and other people on which
23 Mr. Hild was copied per week from 2014 to 2018. Ten a week?

24 A. I don't even have a -- ten is fine. It could be 20. Like,
25 I don't have a basis to remember --

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Stumberger - Cross

1 Q. Understood. I am not asking a precise number. Would you
2 agree that ten is a -- maybe at least ten. Is that a fair
3 estimate?

4 A. Yes.

5 Q. OK. So, that number per week times 50 weeks is 500 e-mails
6 defined as we just defined it per year, times four years, 2014,
7 2015, 2016 -- excuse me, not 2014 -- 2015, '16, '17, '18, times
8 four years is 2,000 e-mails. Do you agree with my math?

9 A. 500 times four is 2,000, yes.

10 Q. Very good. OK. So, in your testimony earlier this morning
11 and yesterday, we looked at a lot of e-mails about the subject
12 matter. I don't know how many there were. But can we agree
13 that they're not the only e-mails about that subject matter,
14 sir?

15 A. Yes.

16 Q. OK. All right. I want to take that down. So,
17 Mr. Stumberger, during this period from September of 2015 up
18 through the end of 2016, as the portfolio grew, there was a
19 belief generally internally at Live Well that you perceived
20 more value than the market, you know, your competitors with
21 respect to these bonds. Do you agree?

22 A. Yes.

23 Q. OK. And there was a decision, and I'm not saying that you
24 made it or that any particular person made it, but just a
25 decision at the corporate level, if you will, to pursue a

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Stumberger - Cross

1 strategic path to acquire as many of these bonds as possible
2 because you thought they were valued more than others. Do you
3 agree?

4 A. I will answer that by saying that we had a firm sense of
5 what the intrinsic value was versus the market value.

6 Q. OK. So is that a yes or --

7 A. I don't know. Could you just repeat the question?

8 Q. Yeah. You guys thought you saw something other people
9 didn't, didn't you?

10 A. That was kind of the justification, rationale discussed on
11 calls, but I know that all my peers at other dealers understand
12 the intrinsic value as well. It wasn't some, you know, thing
13 that we decided at Live Well. It was known by other market
14 players.

15 Q. OK. I am not sure if that's a yes or a no. Let me ask you
16 the question. As a group, you perceived that there was an
17 opportunity with these bonds. Is that the case?

18 A. Yes.

19 Q. OK. And because of this opportunity, the decision was made
20 to go buy as many of these bonds as possible. Yes?

21 A. It was driven -- it was driven in my opinion through the
22 increased financing available.

23 Q. OK. And so why it was we will get to when we get to it.
24 So, right now the question is simply it was, was it not? There
25 was a decision made to take advantage of this opportunity?

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Stumberger - Cross

1 A. Yes.

2 Q. That drove the portfolio growth from 15 bonds to 50. Yes?

3 Let me ask it again, consistent with the strategy to
4 take advantage of this opportunity, effort was made to buy more
5 of these types of bonds. Yes?

6 A. Yes.

7 Q. And in fact, quite a few more of these types of bonds were
8 bought. Yes?

9 A. Yes.

10 Q. OK. Now, during this period -- well, let me ask you this:
11 Did either the old model or Scenario 14 sort of account for
12 regulatory policy changes and other generalized market
13 developments?

14 A. No. It's a forecasting tool.

15 Q. Understood. I mean, Scenario 14 in the old, you know,
16 projecting method, I mean, was more formulaic in the sense
17 that, you know, prepayments and this yield assumption or
18 whatever, stuff like that, right?

19 A. In the old model?

20 Q. Yes, and in the Scenario 14 model as adopted.

21 Understanding that the assumptions in each were different, the
22 nature of the assumptions was more, for lack of a better term,
23 microeconomic. Fair?

24 A. They were -- it was generic market inputs.

25 Q. Can we agree on this: They did not account for sort of

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Stumberger - Cross

1 macroeconomic regulatory policies and other high-level market
2 developments that might impact the value of the bonds?

3 A. The model did not include regulatory inputs or any kind of
4 things like macro events in the market. They were the inputs.

5 Q. Right. And you agree those things could affect the value
6 of the bond portfolio, right?

7 A. The outcome of those events, yes.

8 Q. OK. Well, the outcome of those events. There could be
9 regulatory policy changes that would have consequences. Those
10 consequences would impact the value of the bond portfolio. Do
11 you agree, sir?

12 A. Yes.

13 Q. OK. And just by way of example and not exhaustive
14 representation here, one could be, for example, a regulatory
15 moratorium on, let's say refinancings. That would potentially
16 affect prepayments fees, would it not, sir?

17 A. Yes.

18 Q. And it would affect prepayments fees in a way that would
19 slow them down, would it not, sir?

20 A. A moratorium on refinancings would slow down prepayments.

21 Q. OK. And remind me, am I correct in remembering that the
22 slower a prepayment speed, the more valuable a bond is?

23 A. Yes.

24 Q. So in that way, those things could affect the bond
25 valuations. You agree, sir?

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Stumberger - Cross

1 A. Yes.

2 Q. And in fact there were several regulatory changes not just
3 of that particular kind but other kinds that either were
4 implemented or announced or reasonably foresaw through 2016.
5 Isn't that the case?

6 A. I have recollection there were a series of regulatory
7 updates being implemented or announced or discussed during that
8 time.

9 Q. OK. And there was to whatever extent some internal
10 discussion with yourself, Mr. Hild, your team, about the effect
11 on Live Well's valuation of its bond portfolio of those
12 regulatory changes and their consequences. Do you agree?

13 A. I have recollection there were conversations related to
14 that. I don't know how many or when, but --

15 Q. I didn't ask you that.

16 A. Right.

17 Q. That's fine. OK.

18 During the first quarter of 2017 I believe you
19 testified to some -- there was discussion of Wedbush and some
20 repo lenders and some problems that were had. Do you recall
21 that testimony?

22 A. Yes.

23 Q. Again, I want to be quick but accurate, so if I'm not
24 accurate, correct me. But can we fairly say that -- well,
25 Wedbush decided -- well, for whatever reason, Live Well was

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Stumberger - Cross

1 notified by Wedbush, we're not going to lend you half as much
2 money as we have been. That happened, yes?

3 A. My recollection is Wedbush contacted Live Well with
4 requests to move bonds off their line at different times, and
5 there were a lot of conversations related to getting that done
6 over a period of time.

7 Q. OK. Let me try it this way. Isn't it the case that, say
8 the beginning of January of 2017, that the total credit line,
9 if you will, extended by Wedbush to Live Well at that time was
10 somewhere in the ballpark of \$225 million?

11 A. Correct.

12 Q. OK. And at some point thereafter, either at one time or as
13 a series of times, Wedbush said we're only going to lend you,
14 your credit limit is going to be \$125 million?

15 A. Yes.

16 Q. That was a problem, was it not?

17 A. Yes.

18 Q. And the problem was, if you are buying stuff with your
19 credit card and suddenly your credit card limit is cut in half,
20 you better find, you know, another credit card or something to
21 take its place fairly quickly. Yes?

22 A. Sure.

23 Q. And the problem was, given the nature of repo lending, as
24 we talked about, 90 days at max, holy cow, we better do this
25 quickly. Fair enough?

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Stumberger - Cross

1 A. Yes.

2 Q. And as you mentioned I believe on your testimony on direct,
3 this logically created, you know, quite a stir. This was a
4 challenge for the company. Would you agree?

5 A. Yes.

6 Q. You were involved in figuring out a solution to this
7 challenge. You would agree?

8 A. Yes.

9 Q. I mean, Mr. Hild was certainly involved in figuring out a
10 challenge to this company. You would agree?

11 A. Yes.

12 Q. After all he founded the company back in 2005. Yes?

13 A. Yes.

14 Q. He was the, you know, controlling shareholder; he ran the
15 company. You agree?

16 A. Yes.

17 Q. Not only that, did you have an understanding of Mr. Hild's
18 personal economic relationship to the company in terms of
19 whether he guaranteed the company's debt?

20 A. I didn't know much, if anything. My recollection is I know
21 that Mr. Hild provided a financial guarantee or a backup
22 guarantee on one of the lines, warehouse lines, I don't
23 remember which one, something like that.

24 Q. OK. So do I gather you don't have full knowledge about
25 what was guaranteed by Mr. Hild or what -- some -- there were

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Stumberger - Cross

1 guarantees provided by Mr. Hild, but you don't know to what
2 extent. Is that fair?

3 A. Yes.

4 Q. OK. Can we agree that if Live Well is unable to find
5 financing for some of its bonds, it would not have the revenue
6 stream it needed to repay the debts that it owed and that if it
7 defaulted on the debts that it owed, at least in part Mr. Hild
8 personally would be on the hook. Do we agree, sir?

9 A. Yes.

10 Q. OK. Now, it's my understanding that the internal
11 valuations for Live Well were increased over a series of -- at
12 various times to whatever extent during the first quarter of
13 2017. Do I have that right, sir?

14 A. Yes.

15 Q. OK. And it is the -- let me ask it this way: It happened
16 during the time of this, this financing challenge, if you will.
17 You will agree?

18 A. Yes.

19 Q. OK. But the fact that the bonds were worth more than they
20 had otherwise, than they had been marked at internally had
21 already been, on account of the regulatory issues, had already
22 been discussed internally at Live Well, yes?

23 A. My recollection was the regulatory-related discussions were
24 before that time period, yes.

25 Q. OK. So it was your understanding that -- well, we'll leave

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Stumberger - Cross

1 it at that. So, the bonds were, internally at Live Well the
2 valuations were increased during this time. Do we agree?

3 A. Yes.

4 Q. And again, not to beat a dead horse here, but the effect of
5 that, indirectly assuming that IDC was still accepting Live
6 Well's internal valuations as broker quotes, would be to
7 indirectly increase the borrowing base of Live Well. Do you
8 agree?

9 A. You're saying the regulatory developments caused the prices
10 to go up and -- I'm sorry. Could you repeat that.

11 Q. I'm not saying anything. I'm asking this question. Much
12 like what happened with respect to the first price increase of
13 September of 2015, during the first quarter of 2017, the
14 increase in the internal values of the bonds at Live Well had
15 the indirect effect of increasing Live Well's borrowing base?

16 A. My recollection is the price increases in the first quarter
17 of 2017 were driven by the liquidity events happening. There
18 were --

19 Q. Let me ask it this way. In the first quarter of 2017, was
20 IDC still choosing to accept or requesting Live Well's internal
21 valuations?

22 A. Yes.

23 Q. And was it publishing, was it making the decision to
24 publish those values at that time?

25 A. Yes.

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Stumberger - Cross

1 Q. OK. And part of the -- among others, who those would be
2 published to were Live Well's repo lenders. Yes?

3 A. Yes.

4 Q. OK. All right. There was mention of -- well, let me ask.
5 It is the case, is it not, that, for whatever reason, the
6 decision was made subsequently in 2017, after the first quarter
7 but prior to the SEC investigation, to reduce the bond values
8 internally at Live Well?

9 A. I don't remember a specific conversation, but it's
10 possible.

11 Q. I'm not asking about questions or, you know, conversations
12 or anything like that. If you don't remember, you don't
13 remember.

14 A. I don't remember.

15 Q. My question is you don't remember whether there was a
16 decrease prior to the SEC giving notice of their investigation?

17 A. I don't remember.

18 Q. OK. Do you recall at some point in the summer of 2017 the
19 company getting notice that the SEC was conducting some kind of
20 inquiry?

21 A. Yes.

22 Q. OK. And do I have that timing right? Can I write summer
23 of 2017 on here?

24 A. Sure.

25 Q. OK. And I'm sorry if it's not big enough. I had to try to

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Stumberger - Cross

1 fit it on the board there. But do I understand correctly from
2 your testimony that from about that time until the end prices
3 were kind of steady? Live Well's internal valuation of the
4 bonds was flatlined?

5 A. Yes. They didn't change.

6 Q. OK. OK. Now, you reached out to the SEC towards the
7 end of the summer privately and asked to meet with them, did
8 you not?

9 A. No. They scheduled a meeting with me.

10 Q. It's your testimony you didn't reach out to them?

11 A. To schedule a meeting?

12 Q. For any reason.

13 A. I recall sending them an e-mail directly right when -- on
14 the heels of when the subpoenas came.

15 Q. OK. So, by "outreach" let's include that to mean sending
16 an e-mail to the SEC. Defined as such, let me ask you again.
17 Did you reach out to the SEC towards the end of the summer
18 2017?

19 A. Yes.

20 Q. You remained employed at Live Well through March of 2019,
21 correct?

22 A. Yes.

23 Q. Did you tell the company or Mr. Hild that you had reached
24 out to the SEC?

25 A. No.

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Stumberger - Cross

1 Q. At some point, as Mr. Hartman asked you, you began speaking
2 with the U.S. Attorney's Office or agents of that office. When
3 did that begin, best of your memory?

4 A. Summer 2019.

5 Q. I'm sorry, when?

6 A. The summer of 2019.

7 Q. The summer of 2019?

8 A. I'm sorry. The question was?

9 Q. I'm sorry. I'm just trying to hear your answer. The
10 question was, when did you start talking to the -- not the SEC,
11 but the U.S. Attorney's Office and/or the FBI?

12 A. Summer of 2019.

13 Q. OK. Was that after you left Live Well?

14 A. Yes.

15 Q. OK. But before you left Live Well, in March of 2019, you
16 had a series of meetings with the SEC towards the end of 2018,
17 maybe early 2019, is that right?

18 A. Yes.

19 Q. And, in fact, you signed a declaration with the SEC that
20 was executed in January of 2019. Yes?

21 A. Yes.

22 Q. Now, up until that point, can we fairly say that you had
23 denied being a part of any kind of scheme to defraud? Can we
24 agree?

25 A. Up until what point?

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Stumberger - Cross

1 Q. Well, at least up until January of 2019, when you executed
2 your declaration with the SEC.

3 A. You're asking me if I declined admitting I was part of
4 fraud?

5 Q. No. I'm saying you met with the SEC, you reached out to
6 them in August of 2017, whenever you said. There were
7 conversations over whatever period of time, including through
8 when you signed a declaration with the SEC in January of 2019.
9 Do we agree?

10 A. Yes.

11 Q. When you met with the SEC initially, you declined or you
12 denied being involved in any kind of scheme to defraud. Yes?

13 A. In my meetings with the SEC, they asked questions, I
14 answered the questions. I don't remember which questions they
15 asked at any given -- I met with them three times I think.

16 Q. One of their questions was, Hey, were you perpetrating a
17 scheme to defraud. Yes?

18 A. I don't have any recollection of that question.

19 Q. You don't recall that question being asked at any of these
20 meetings? That's your testimony?

21 A. I don't have any recollection of that.

22 Q. OK. Notwithstanding that, didn't you assert to the SEC, at
23 least up until January of 2019, that you weren't a part of any
24 wrongdoing?

25 A. I would have to read the affidavit or declaration, but I

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Stumberger - Cross

1 don't -- I was -- I remember saying I was involved in conduct I
2 was concerned about and it was wrong.

3 Q. OK. I'm sorry. I'm really just trying to get at when you
4 initially talked to the SEC you denied any wrongdoing; isn't
5 that right?

6 A. I don't recall.

7 Q. You don't recall?

8 A. I don't recall saying that.

9 Q. OK. You, in fact, defended the, you know, the valuations
10 throughout the period and -- well, we'll start with that. You
11 defended the valuations throughout the period.

12 MR. HARTMAN: Your Honor, could we have a quick
13 sidebar on this issue?

14 THE COURT: Sure.

15 (Continued on next page)

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Stumberger - Cross

1 (At sidebar).

2 MR. HARTMAN: Is it OK if I put on the record what the
3 issue is?

4 MR. DUSING: Absolutely.

5 MR. HARTMAN: Your Honor, my objection was related to
6 the fact that some of the events happened in the context of the
7 consultations working with Alan Gold and counsel for the
8 company, and we tried to elicit some of that on direct and
9 Mr. Dusing objected, as was his right. So, you know, our
10 objection was that this would open the door to that.

11 MR. DUSING: The defense recognizes that it was an
12 improper question in light of our previous conversations, and
13 it was a mistake and I apologize.

14 THE COURT: OK. You will just withdraw it.

15 MR. DUSING: Yes.

16 THE COURT: All right. Thank you.

17 (Continued on next page)

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Stumberger - Cross

1 (In open court)

2 MR. DUSING: May I continue, your Honor?

3 THE COURT: You may.

4 MR. DUSING: I would move to withdraw that question,
5 your Honor.

6 THE COURT: Withdrawn.

7 BY MR. DUSING:

8 Q. Mr. Stumberger, in any event, we do agree, do we not, that
9 you executed a declaration with the SEC admitting some kind of
10 wrongdoing in or about January of 2019?

11 A. Yes.

12 Q. Nonetheless, can we also agree that you didn't tell the
13 company anything about that, right?

14 A. Yes.

15 Q. You didn't tell Mr. Hild anything about that, right?

16 A. I wasn't allowed to.

17 Q. I am sorry?

18 A. I wasn't allowed. I did not.

19 Q. When you say you weren't allowed to, was that a request
20 made to you by they SEC?

21 A. I don't recall if it was my lawyers or them, but --

22 Q. Understood. I don't want to get into anything you said to
23 your lawyers or anything like that, so understood.24 Nonetheless, you continued to get a paycheck from Live Well
25 through March of 2019. Do we agree?

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Stumberger - Cross

1 A. Yes. And it's something I discussed at length with the
2 SEC. When you are going through an investigation with the SEC,
3 you can't get a job, so they were sympathetic to that and it
4 was understood.

5 Q. OK. So is that a yes?

6 A. Yes.

7 Q. All right. I mentioned earlier at some point in time, I
8 believe back in September of 2015 in connection with the
9 implementation of Scenario 14 you secretly met with lawyer
10 with your team. Do you remember that testimony?

11 MR. HARTMAN: Your Honor, this has been asked and
12 answered.

13 THE COURT: I assume you're moving on from this.

14 MR. DUSING: It is a predicate question. I can
15 withdraw it and rephrase, your Honor.

16 THE COURT: OK.

17 BY MR. DUSING:

18 Q. Mr. Stumberger, did you also meet with the same attorney
19 again with your team in February of 2019?

20 A. I have recollection that we met with the attorneys February
21 2017. September 2015, February 2017. I was told there was
22 another one. I wasn't a part of it.

23 Q. My question I want to -- let's be careful about
24 communications here. Let me ask you this: How many times did
25 you meet with the attorney secretly?

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Stumberger - Cross

1 A. My recollection was two.

2 Q. OK. And do I understand that, to the best of your
3 recollection, they were roughly in September of 2015 and
4 February of 2017?

5 A. That's my recollection.

6 Q. OK. Do I understand that you didn't tell Mr. Hild or the
7 company about the second meeting either?

8 A. Yes.

9 MR. DUSING: All right. Your Honor, I would like to
10 transition to the bubble here.

11 THE COURT: All right.

12 MR. DUSING: I don't know if it's a good time for --

13 THE COURT: You can just put that mic down anywhere.

14 MR. DUSING: I am not sure what the Court's intentions
15 are with respect to an afternoon break.

16 THE COURT: Raise your hand if you're kind of burnt
17 out for the day. OK. All right. I mean, we can end for the
18 day. We could take a short break and go until 4:15. I'm
19 trying to end this trial as soon as we can, so it's a balance
20 of long days versus long weeks. If you need to take a break,
21 I'm happy to do that.

22 MR. DUSING: I'm happy to accommodate. It's been a
23 long day.

24 THE COURT: We will do that. We will start again at
25 10 in the morning. Please remember just keep an open mind,

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Stumberger - Cross

1 don't discuss the case, don't research the case, and have a
2 nice evening.

3 (Continued on next page)

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Stumberger - Cross

1 (Jury not present)

2 THE COURT: You can step down. Thank you. All right.

3 So maybe it was my fault for not taking an afternoon
4 break. I kind of thought we could get through since we took a
5 late lunch, but we are doing the best we can.

6 Anything you need to talk to me about?

7 MR. HARTMAN: Judge, the only issue is I expect
8 Mr. Dusing to be introducing some exhibits on cross with
9 Mr. Stumberger tomorrow. We may have some objections to those.

10 So perhaps if we could meet 15 minutes before Court
11 tomorrow. We will, as in the past, try to work that out. We
12 can let you know, Judge, if there aren't going to be. I just
13 wanted to flag that.

14 THE COURT: That's fine. I have a plea at 9, but I
15 should be done by 9:30, 9:45, so I'll come down as soon as
16 that's done.

17 Try your best to resolve it. If there's anything I
18 should see in advance, feel free to e-mail it to chambers so I
19 can look at it.

20 MR. DUSING: It would be my hope that we could resolve
21 those. We will talk, Judge.

22 THE COURT: You are going to work together with the
23 exhibit we already addressed this morning?

24 MR. HARTMAN: Yes. We will do that.

25 THE COURT: All right.

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Stumberger - Cross

I will see you in the morning then.

Thank you.

(Adjourned to April 16, 2021, at 9:30 a.m.)

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